

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75202-2790
Telephone: (214) 855-7500
Facsimile: (214) 978-4375

COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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|------------------------------|---|-------------------------|
| In re | § | |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT, | § | Chapter 11 |
| L.P., | § | |
| | § | Case No. 19-34054-sgj11 |
| Debtor. | § | |
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| HIGHLAND CAPITAL MANAGEMENT, | § | |
| L.P., | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Adv. No. 21-03004 |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT | § | |
| FUND ADVISORS, L.P. | § | |
| | § | |
| Defendant. | § | |

**DEFENDANT’S APPENDIX IN SUPPORT OF
SECOND MOTION FOR LEAVE TO AMEND ANSWER**

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Highland Capital Management Fund Advisors, L.P. (“HCMFA” or the “Defendant”), the defendant in the above styled and numbered adversary proceeding (the “Adversary Proceeding”) commenced by Highland Capital Management, L.P. (the “Debtor”), and files this its *Defendant’s Appendix In Support of Second Motion for Leave to Amend Answer* (the

“Appendix”), filed in support of the *Defendant’s Second Motion for Leave to Amend Answer and Brief In Support Thereof* (the “Motion”), as follows:

| <u>No.</u> | <u>Description</u> | <u>Range</u> |
|------------|--|--------------|
| 1 | Declaration of Dennis C. Sauter, Jr. | 1-52 |
| | 1 Second Amended and Restated Shared Services Agreement | 13-25 |
| | 2 Amended and Restated Shared Services Agreement | 26-44 |
| | 3 E-mail Chain | 45-48 |
| | 4 Order Granting Debtor’s Motion for a Preliminary Injunction Against James Dondero | 49-52 |
| 2 | October 19, 2021 Deposition of Frank Waterhouse | 53-449 |
| 3 | October 27, 2021 Deposition of Kristin Hendrix | 450-653 |
| 4 | October 27, 2021 Deposition of David Klos | 654-813 |
| 5 | Declaration of Davor Rukavina | 814-828 |
| | A Defendant’s Second Set of Requests for Production to Plaintiff | 817-821 |
| | B Debtor’s Responses and Objections to Defendant’s Second Set of Requests for Production | 822-828 |

RESPECTFULLY SUBMITTED this 30th day of November, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
3800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
Email: drukavina@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 30th day of November, 2021, true and correct copies of this document, with the exhibits referenced herein (redacted) were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record, and in unredacted format by e-mail on John Morris, Esq., counsel of record for the Plaintiff.

/s/ Davor Rukavina

Davor Rukavina

IN THE UNITED STATES BANKRUPTCY COURT
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| FUND ADVISORS, L.P. | § | |
| | § | |
| Defendant. | § | |
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| HIGHLAND CAPITAL MANAGEMENT, | § | |
| L.P., | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Adv. No. 21-03005 |
| | § | |
| NEXPOINT ADVISORS, L.P., | § | |
| | § | |
| Defendant. | § | |

DECLARATION OF DENNIS C. SAUTER, JR.

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

I. INTRODUCTION

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA") and/or NexPoint Advisors, L.P. ("NexPoint").

2. I am an attorney licensed to practice law in the State of Texas, and have been such since 2001. I am in-house counsel for both HCMFA and NexPoint, and have been since at least January 1, 2021, which is why I am aware of both of these adversary proceedings. I have been responsible for managing outside counsel in both of these adversary proceedings since their filing, and I remain so responsible.

3. While I provided limited legal services to Highland Capital Management, L.P. (the "Debtor") and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. I am executing this Declaration in Support of the motions of both HCMFA and NexPoint to amend their answers in the above styled and numbered adversary proceedings initiated by the Debtor.

5. I am aware that both HCMFA and NexPoint previously sought and obtained permission to amend their answers in these adversary proceedings. Nevertheless, due to very recent events and discovery, HCMFA and NexPoint have determined that it is advisable to again amend their answers to assert certain defenses or affirmative defenses, which should by now have become clear to the Debtor as a result of very recent discovery, in order that justice may be done, that they may assert all available defenses and affirmative defenses, and that the trier of fact in

these adversary proceedings will have all relevant claims, defenses, and facts before it. Specifically:

- (i) HCMFA seeks to explicitly assert that Frank Waterhouse (“Waterhouse”) did not sign the two promissory notes that the Debtor has sued HCMFA on in adversary proceeding no. 21-03004; and
- (ii) NexPoint seeks to explicitly assert that it had prepaid the promissory note in question in adversary proceeding no. 21-03005 and that, accordingly, the December 31, 2020 payment had been satisfied by prepayment.

II. BACKGROUND

6. HCMFA and NexPoint are registered advisors under the Investment Advisors Act of 1940. As such, they advise various independent funds which, in turn, are investment vehicles for a large number of investors.

7. HCMFA and NexPoint have always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

8. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “HCMFA Agreement”), a true and correct copy of which is attached hereto as Exhibit 1, while most of the services needed by NexPoint to transact its business were provided by the Debtor pursuant to that certain *Amended and Restated Shared Services Agreement* dated January 1, 2018 (the “NexPoint Agreement,” with the HCMFA Agreement, the “Shared Services Agreements”), a true and correct copy of which is attached hereto as Exhibit 2.

9. This was standard business practice for the Debtor and various other affiliated companies, including other advisers, within the Debtor’s “complex” of business: the Debtor would

employ most of the employees and then share those employees with HCMFA, NexPoint, and other “complex” entities, in exchange for payments by such entities.

10. Thus, under the Shared Services Agreements, employees of the Debtor (many of whom were highly trained and specialized) provided many key services to HCMFA and NexPoint on an as-needed basis. These services included legal, accounting, treasury, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreements, the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor’s servers.

11. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate* (the “HCMFA Complaint”) against HCMFA, seeking to recover on two alleged promissory notes, each dated May 2, 2019 (the “HCMFA Notes”): (i) a note for \$5 million; and (ii) a note for \$2.4 million. HCMFA timely answered.

12. On January 22, 2021, the Debtor also filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate* (the “NexPoint Complaint,” with the HCMFA Complaint, the “Complaints”) against NexPoint, seeking to recover on an alleged promissory note dated May 31, 2017 in the original principal amount of \$30,746,812.33 (the “NexPoint Note,” with the HCMFA Notes, the “Notes”). NexPoint timely answered.

13. At the time that the Debtor filed the Complaints, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them, since I had not been employed by HCMFA or NexPoint at the time that they were allegedly executed, and the few direct employees of HCMFA and NexPoint likewise had limited knowledge of the Notes. I also discussed the Notes with James Dondero, president of HCMFA and NexPoint, and formerly the CEO of the Debtor, and Mr. Dondero recalled only high-level details of the Notes. My review of

the limited books and records of HCMFA and NexPoint that were not then in the possession of the Debtor did not reveal any background facts regarding the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA and NexPoint pursuant to the Shared Services Agreements in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 3 is a true and correct copy of an e-mail exchange between myself and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery informed me that Debtor employees had been instructed not to discuss with me anything that is “inimical” to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery where he cautioned me not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaints, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 4. That injunction prohibited Mr. Dondero from “directly or indirectly . . . communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided.” As the information concerning the Notes was background information and not related to “services currently provided,” I was concerned that, if I discussed the Notes with the Debtor’s employees, the Debtor would argue that either Mr. Dondero or I was violating the Court’s injunction.

17. In sum, after the Complaints were filed, the employees of HCMFA or NexPoint knew very little about the Notes, and I was precluded from contacting the people that would have known information about the notes, *i.e.* the Debtor’s employees, to discuss what they may have

known. I also had very limited access to HCMFA's and NexPoint's books and records, and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreements and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA and NexPoint to continue providing essentially the same services that they had previously provided under the Shared Services Agreements. Additionally, the Debtor provided access to HCMFA and NexPoint to many of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access many books and records without fear of violating any court order.

19. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreements, HCMFA, NexPoint, other entities for which I am in-house counsel, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, moving into new offices, setting up new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and NexPoint and others to third parties.

20. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Waterhouse and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memoranda that I had not previously known about to that helped with the factual background of the Notes.

21. From these discussions and documents, I was able to better understand the factual background concerning the HCMFA Notes, ultimately concluding at the time that the Notes were

signed by mistake by Waterhouse without authority from HCMFA, had no consideration, and were never intended to be debt instruments of HCMFA. I testified as to these matters before based on my understanding, and HCMFA obtained leave to amend its answer to assert these defenses.

III. FACTS PERTINENT TO HCMFA

22. With respect to the HCMFA Notes, those notes appear to be signed by Waterhouse. At the time of those alleged Notes, Waterhouse was the Chief Financial Officer of the Debtor. At that time, he was also either the Chief Financial Officer, or Treasurer, of HCMFA (either way, an officer level position at HCMFA).

23. In the April, 2021 timeframe, when I discussed the HCMFA Notes with Waterhouse, I asked him whether he had signed those two notes. At that time, he told me that he believed that he had, because he had not been electronically signing documents in May, 2019 and the signatures on the notes looked like they were his. Although he did not remember many, if any, of the facts and circumstances concerning the HCMFA Notes, given that he told me that he believed he signed those notes because the signatures looked like they were his and because he signed a lot of documents and could not remember each one particularly, I did not have reasonable grounds to believe that Waterhouse had not in fact signed the HCMFA Notes or authorized his signature to be affixed to the HCMFA Notes. And, I was not prepared to assert a defense in which I did not have a good faith belief.

24. This changed in late October, 2021. On October 19, 2021, the Debtor and HCMFA deposed Waterhouse, including in connection with the HCMFA Notes. In that deposition, and among other things, Waterhouse testified that (and I am paraphrasing): (i) he did not remember signing the HCMFA Notes or giving anyone permission to sign his name to the same; (ii) his signatures on the HCMFA Notes appeared to be electronic signatures; and (iii) in May, 2019, he

sometimes signed documents electronically, but if he did so, he would have sent an e-mail to Kristen Hendrix (“Hendrix”) authorizing and instructing her to sign his name to a document.

25. Although I understand that HCMFA had requested the originals of the HCMFA Notes previously from the Debtor in discovery, I understand that those native documents were not produced until October 25, 2021. I understand that, when produced, those originals showed that Waterhouse’s signature was indeed an electronic signature on both of the HCMFA Notes and, unlike various electronic signatures that employ some control process or matrix certifying authenticity, here both signatures were merely pictures of his signatures. Indeed, one can copy and paste that same picture on to any document without any control or approval needed by Waterhouse, as I do below (below is the picture copied from the HCMFA Notes, originally in Word with the signature picture in “picture” format, probably .jpg).



26. Then, on October 27, 2021, HCMFA deposed Hendrix. In that deposition, and among other things, Hendrix testified that (and I am paraphrasing): (i) she prepared the HCMFA Notes from a Word document template, by inputting various details into the document and adding Waterhouse’s signature picture; (ii) she does not remember Waterhouse authorizing her to affix his signature, although she believes that this was likely the case; (iii) she does not remember printing out the documents and presenting them to Waterhouse for approval or signature; and (iv) she does not remember whether the HCMFA Notes were printed out at all or if they were simply saved in their original electronic format on the Debtor’s system.

27. Importantly, Hendrix remained an employee of the Debtor after the Debtor terminated most employees around February, 2021. Thus, neither I nor anyone else with HCMFA or NexPoint was able to talk to her directly regarding the Notes, and neither I nor, to my

knowledge, anyone else working with or for HCMFA or NexPoint did so. In other words, her deposition was the first time that HCMFA and NexPoint learned what she had to say of relevance to the Notes.

28. Additionally, as noted above, Waterhouse testified that, if he had authorized Hendrix or someone else to electronically sign his name to a document, he would have done so through an e-mail. I understand from Munsch Hardt that the Debtor has produced no such e-mail in discovery.

29. Therefore, HCMFA now believes that Waterhouse never in fact signed the HCMFA Notes or authorized Hendrix or anyone else to sign his name to the HCMFA Notes, and HCMFA finds it advisable and appropriate to amend its answer to explicitly assert this defense.

30. HCMFA did not know, and could not reasonably have known, about this defense until the end of October, 2021, after the Hendrix deposition transcript was prepared. HCMFA did not delay in any way in seeking to assert this defense. As noted above, had Waterhouse not told me in April, 2021 that he assumed that he signed the HCMFA Notes because the signatures looked like his, or had he given me any indication that he had not in fact signed the HCMFA Notes, then HCMFA would have asserted this defense sooner. As is, however, it was not until discovery in late October, 2021 that HCMFA learned that Waterhouse apparently did not sign the HCMFA Notes or authorize his electronic signature, and HCMFA did not delay thereafter in promptly seeking to amend its answer.

31. HCMFA therefore respectfully requests leave to amend its answer to expressly plead that the HCMFA Notes were never in fact signed.

IV. FACTS PERTINENT TO NEXPOINT

32. The NexPoint note was in the original principal amount of \$30,746,812.33. The note required an annual payment of principal and interest. By December 31, 2020, the amount due

on the NexPoint note was approximately \$24,471,804.98. Thus, even though the NexPoint Note was dated May 31, 2017 and had a thirty (30) year amortization, meaning that there should have been only three (3) annual payments by December 31, 2020 (2017, 2018, and 2019), the amount of the NexPoint Note was significantly lower than it should have been.

33. This was one of the issues I discussed with Waterhouse in April, 2021 when I was able to finally discuss the Notes with him. In particular, I asked him why the amount due on the NexPoint Note was significantly less than it appeared that it should have been based on its original principal amount and annual payments. Waterhouse did not know the answer to that question, but informed me that the payment ledger kept by the Debtor for that note should have the answer.

34. Like HCMFA, NexPoint deposed Hendrix on October 27, 2021. During that deposition, it was learned that a document the Debtor produced, bates-labeled D-NNL-029141, was the internal Debtor-maintained payment ledger for the NexPoint Note. The Debtor had produced this document before, in early June, 2021, but there were two problems: (i) NexPoint did not know that this document was *the* payment ledger for the NexPoint Note; and (ii) NexPoint had no context or ability to know what the entries on the document meant.

35. Indeed, Mr. James Seery, at his deposition on October 19, 2021, while confirming that the Debtor did maintain a payment ledger for the NexPoint Note and that the Debtor had produced the same, was unable to state whether document D-NNL-029141 was that ledger and, in fact, testified as to his belief that this document “is something else.” If the CEO and CRO of the Debtor was unsure what document D-NNL-029141 was, then NexPoint cannot reasonably be expected to know that that document was the official payment ledger until the October 27, 2019 deposition of Hendrix. Indeed, it was the Hendrix deposition that confirmed the existence of the prepayment defense because Hendrix testified that (I am paraphrasing): (i) if the Debtor needed

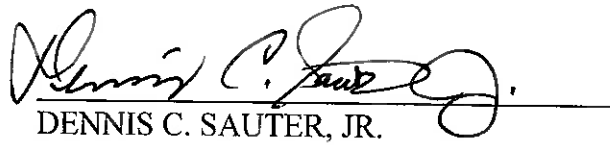
cash, then one of its affiliates, such as NexPoint, would transfer the Debtor funds; (ii) this occurred in 2019; and (iii) such transfers would have been recorded by the Debtor as prepayments.

36. NexPoint believes that that ledger proves that NexPoint had in fact prepaid the December 31, 2020 obligation under the NexPoint Note, such that there was no failure by NexPoint to make that payment and therefore no grounds to accelerate the NexPoint Note. That also explains why the principal amount of the NexPoint Note was significantly less than it would have been without prepayments.

37. NexPoint did not delay in seeking to expressly assert this prepayment defense. The payment ledger was a document of the Debtor that, prior to discovery, NexPoint did not have access to and, in fact, was prohibited by the Debtor from even trying to access. Once that document was produced by the Debtor in discovery, NexPoint used it at the appropriate depositions which, for scheduling reasons and by the agreement of the parties, did not occur until late October, 2021. As soon as logistically possible thereafter, NexPoint sought to assert this defense. While NexPoint questioned why the amount due on the NexPoint Note was significantly less, and while I personally sought an answer from Waterhouse (who did not know), that does not necessarily mean that the NexPoint Note was prepaid, as it could have been forgiven in part or otherwise treated, and NexPoint did not want to raise a defense without evidence to support the defense which, like I say above, did not come to light until late October, 2021, through discovery.

38. NexPoint therefore respectfully requests that it be granted leave to amend its answer to assert an additional defense that the December 31, 2020 payment on the NexPoint Note had been prepaid and that there was therefore no default in the failure to make the same, and no right to accelerate the NexPoint Note.

Signed: November 17, 2021



DENNIS C. SAUTER, JR.

SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this “*Agreement*”) is entered into to be effective as of 8th day of February, 2013 (the “*Effective Date*”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“*HCMLP*”), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership (“*HCMFA*”), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a “*Party*” and collectively the “*Parties*”.

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I DEFINITIONS

“*Actual Cost*” means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

“*Affiliate*” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “*control*” (including, with correlative meanings, the terms “*controlled by*” and “*under common control with*”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“*Agreement*” has the meaning set forth in the preamble.

“*Allocation Percentage*” has the meaning set forth in Section 4.01.

“*Applicable Margin*” shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm’s length value of the particular service or item allocated.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“Effective Date” has the meaning set forth in the preamble.

“Governmental Entity” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Liabilities” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“Loss” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term ***“Loss”*** will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“New Shared Service” has the meaning set forth in Section 2.03.

“Party” or ***“Parties”*** has the meaning set forth in the preamble.

“Person” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“Quarterly Report” has the meaning set forth in Section 5.01.

“Recipient” means HCMFA and any of HCMFA’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

“Service Provider” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

“Service Standards” has the meaning set forth in Section 6.01.

“Shared Assets” shall have the meaning set forth in Section 3.02.

“Shared Services” shall have the meaning set forth in Section 2.01.

“Subsidiary” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“Tax” or ***“Taxes”*** means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

“Term” has the meaning set forth in Section 7.01.

ARTICLE II SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on Annex A attached hereto, the “*Shared Services*”), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a “*Change*”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “*Change Request*”) and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Shared Service in any material respect or increase Recipient’s cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a “*New Shared Service*”). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a “*Shared Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the “*Shared IP Rights*”) pursuant to third party intellectual property Agreements (“*Third Party IP Agreements*”), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the “*Future Shared Assets*” and collectively with the Shared IP Rights, the “*Shared Assets*”).

ARTICLE IV COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, “*Allocation Percentage*” means:

- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the “**Quarterly Report**”).

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE VII TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

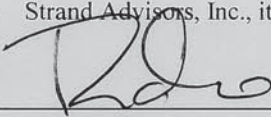
Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

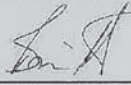
HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: 
Name: James Dondero
Title: President

**HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.**

By: Strand Advisors XVI, Inc., its general partner

By: 
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance

General compliance
Compliance systems

Facilities

Equipment
General Overhead
Office Supplies
Rent & Parking

Finance & Accounting

Book keeping
Cash management
Cash forecasting
Credit facility reporting
Financial reporting
Accounts payable
Accounts receivable
Expense reimbursement
Vendor management

HR

Drinks/snacks
Lunches
Recruiting

IT

General support & maintenance (OMS, development, support)
Telecom (cell, phones, broadband)
WSO

Legal

Corporate secretarial services
Document review and preparation
Litigation support
Management of outside counsel

Marketing and PR

Public relations

Tax

Tax audit support
Tax planning
Tax prep and filing

Investments

Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this “Agreement”), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the “Management Company”), and Highland Capital Management, L.P., a Delaware limited partnership (“Highland”), as the staff and services provider hereunder (in such capacity, the “Staff and Services Provider” and together with the Management Company, the “Parties”).

RECITALS

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”);

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the “Original Agreement”);

WHEREAS, the Parties desire to amend and restate the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a “Shared Employee”), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Affiliate” shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term “control” means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

“Applicable Asset Criteria and Concentrations” means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

“Applicable Law” shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

“Client or Account” shall mean any fund, client or account advised by the Management Company, as applicable.

“Covered Person” shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

“Governmental Authority” shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

“Indebtedness” shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers’ acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

“Operating Guidelines” means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

“Portfolio” means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

“Securities Act” shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) “or” is not exclusive (unless preceded by “either”) and “include” and “including” are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) “writing”, “written” and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) “hereof”, “herein”, “hereunder” and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of \$168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance: Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records: Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom.

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a “Disabling Conduct”) on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person’s sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated (“Claims”), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit of and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

- (a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

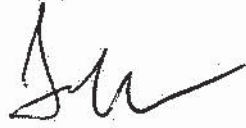
or to such other address or email address as shall have been notified to the other Parties.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.


NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its
General Partner

By: 
Name: Frank Waterhouse
Title: Treasurer

**HIGHLAND CAPITAL
MANAGEMENT, L.P.**

By: Strand Advisors, Inc., its General
Partner

By: 
Name: Frank Waterhouse
Title: Treasurer

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM
To: DC Sauter
Cc: Gregory V. Demo
Subject: Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I, as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: DC Sauter <DSauter@NexPointadvisors.com>
Date: Thursday, September 17, 2020 at 4:56 PM
To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

NEXPOINT

From: DC Sauter
Sent: Tuesday, September 15, 2020 8:55 AM
To: 'James Seery' <jpseeryjr@gmail.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thought it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery <jseeryjr@gmail.com>
Sent: Tuesday, September 15, 2020 7:01 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>; Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter <DSauter@nexpointadvisors.com> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

1. The release by Strand, which also serves as the general partner of HCMFA; and
2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147
dsauter@nexpointadvisors.com | www.NexPointGroup.com

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>



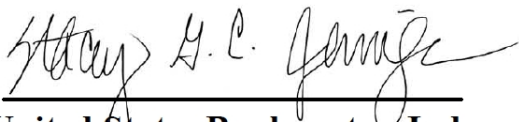
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§ Adversary Proceeding No.
§ No. 20-03190-sgj
§
§
§
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management*,

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).²

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

² For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 IN RE:

Chapter 11

6 HIGHLAND CAPITAL
MANAGEMENT, L.P.,

CASE NO.
19-34054-SGI11

7 Debtor.

8 HIGHLAND CAPITAL MANAGEMENT, L.P.,

9 Plaintiff,

10 vs.

Adversary
Proceeding No.
21-03000-SGI

11 HIGHLAND CAPITAL MANAGEMENT
12 FUND ADVISORS, L.P.; NEXPOINT
ADVISORS, L.P.; HIGHLAND
13 INCOME FUND; NEXPOINT
STRATEGIC OPPORTUNITIES FUND;
14 NEXPOINT CAPITAL, INC.; and
CLO HOLDCO, LTD.,

15 Defendants.

16
17 REMOTE VIDEOTAPED DEPOSITION OF

18 FRANK WATERHOUSE

19 October 19, 2021

20
21
22
23
24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No: 201195

1 WATERHOUSE - 10-19-21

2

3

4

October 19, 2021

5

9:30 a.m.

6

7

8

9

Remote Deposition of FRANK WATERHOUSE,

10

held before Susan S. Klinger, a Registered

11

Merit Reporter and Certified Realtime Reporter

12

of the State of Texas.

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WATERHOUSE - 10-19-21

A P P E A R A N C E S:

(All appearances via Zoom.)

Attorneys for the Reorganized Highland Capital
Management:

John Morris, Esq.

Hayley Winograd, Esq.

PACHULSKI STANG ZIEHL & JONES

780 Third Avenue

New York, New York 10017

Attorneys for the Witness:

Debra Dandeneau, Esq.

Michelle Hartmann, Esq.

BAKER MCKENZIE

1900 North Pearl Street

Dallas, Texas 75201

Attorneys for NexPoint Advisors, LP and
Highland Capital Management Fund Advisors,
L.P.:

Davor Rukavina, Esq.

An Nguyen, Esq.

MUNSCH HARDT KOPF & HARDD

500 North Akard Street

Dallas, Texas 75201-6659

1 WATERHOUSE - 10-19-21

2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,
3 and HCMS:

4 Deborah Deitsch-Perez, Esq.

5 Michael Aigen, Esq.

6 STINSON

7 3102 Oak Lawn Avenue

8 Dallas, Texas 75219

9
10 Attorneys for Dugaboy Investment Trust:

11 Warren Horn, Esq.

12 HELLER, DRAPER & HORN

13 650 Poydras Street

14 New Orleans, Louisiana 70130

15
16 Attorneys for Marc Kirschner as the trustee for
17 the litigation SunTrust:

18 Deborah Newman, Esq.

19 QUINN EMANUEL URQUHART & SULLIVAN

20 51 Madison Avenue

21 New York, New York 10010

22
23 Also Present:

24 Ms. La Asia Canty

1 WATERHOUSE - 10-19-21

2 I N D E X

| | | |
|----|----------------------------------|------|
| 3 | | |
| 4 | WITNESS | PAGE |
| 5 | FRANK WATERHOUSE | |
| 6 | EXAMINATION BY MR. MORRIS | 10 |
| 7 | EXAMINATION BY MR. RUKAVINA | 256 |
| 8 | EXAMINATION BY MS. DEITSCH-PEREZ | 352 |
| 9 | EXAMINATION BY MR. MORRIS | 377 |
| 10 | EXAMINATION BY MR. RUKAVINA | 387 |
| 11 | EXAMINATION BY MS. DEITSCH-PEREZ | 393 |

12

13 E X H I B I T S

| | | |
|----|---|------|
| 14 | No. | Page |
| 15 | Exhibit 2 NPA et al Amended Complaint | 142 |
| 16 | Exhibit 33 6/3/19 Management | 91 |
| 17 | Representation | |
| 18 | Exhibit 34 HCMLP Consolidated Financial | 94 |
| 19 | Statements | |
| 20 | Exhibit 35 HCMFA Incumbency Certificate | 151 |
| 21 | Exhibit 36 Email string re 15(c) | 170 |
| 22 | Exhibit 39 HCMLP Operating Results 2/18 | 226 |
| 23 | Exhibit 40 Summary of Assets and | 236 |
| 24 | Liabilities | |
| 25 | Exhibit 41 12/19 Monthly Operating Report | 258 |

| | | |
|----|---|-----|
| 1 | WATERHOUSE - 10-19-21 | |
| 2 | Exhibit 45 HCMFA Consolidated Financial | 135 |
| 3 | Statements | |
| 4 | Exhibit 46 NexPoint 2019 Audited | 218 |
| 5 | Financials | |
| 6 | | |
| 7 | Exhibit A1 Emails 11/25 | 328 |
| 8 | Exhibit A2 Emails 12/31 | 338 |
| 9 | Exhibit A6 Emails 1/12 | 341 |
| 10 | Exhibit A7 Promissory Notes | 297 |
| 11 | Exhibit A9 Email, 8/31 | 307 |
| 12 | Exhibit A10 Acknowledgment from HCMLP | 302 |
| 13 | Exhibit A11 HCMLP Schedule 71A | 309 |
| 14 | | |
| 15 | | |
| 16 | | |
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| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
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1 WATERHOUSE - 10-19-21

2 P R O C E E D I N G S

3 VIDEOGRAPHER: Good morning,

4 Counselors. My name is Scott Hatch. I'm a
5 certified legal videographer in association
6 with TSG Reporting, Inc.

7 Due to the severity of COVID-19 and
8 following the practice of social
9 distancing, I will not be in the same room
10 with the witness. Instead, I will record
11 this videotaped deposition remotely. The
12 reporter, Susan Klinger, also will not be
13 in the same room and will swear the witness
14 remotely.

15 Do all parties stipulate to the
16 validity of this video recording and remote
17 swearing, and that it will be admissible in
18 the courtroom as if it had been taken
19 following Rule 30 of the Federal Rules of
20 Civil Procedures and the state's rules
21 where this case is pending?

22 MR. HORN: Yes.

23 MS. DANDENEAU: Yes.

24 MR. MORRIS: Yes. John Morris. I
25 would just try to do a negative notice

1 WATERHOUSE - 10-19-21

2 here, as we did yesterday. If anybody has
3 a problem with what was just stated, can
4 you state your objection now?

5 Okay. No response, so everybody
6 accepts the stipulation and the instruction
7 that was just given.

8 VIDEOGRAPHER: Thank you. This is
9 the start of media labeled Number 1 of the
10 video recorded deposition of Frank
11 Waterhouse In Re: Highland Capital
12 Management, L.P., in the United States
13 Bankruptcy Court for the Northern District
14 of Texas, Dallas Division, Case Number
15 21-03000-SGI.

16 This deposition is being held via
17 video conference with participants
18 appearing remotely due to COVID-19
19 restrictions on Tuesday, October 19th, 2021
20 at approximately 9:32 a.m. My name is
21 Scott Hatch, legal video specialist with
22 TSG Reporting, Inc. headquartered at 228
23 East 45th Street, New York, New York. The
24 court reporter is Susan Klinger in
25 association with TSG Reporting.

1 WATERHOUSE - 10-19-21

2 Counsel, please introduce
3 yourselves.

4 MR. MORRIS: John Morris, Pachulski
5 Stang Ziehl & Jones for the reorganized
6 Highland Capital Management, L.P., the
7 plaintiff in these actions.

8 MS. DANDENEAU: Deborah Dandeneau
9 from Baker McKenzie. My partner, Michelle
10 Hartmann, is also in the room with me,
11 representing Frank Waterhouse individually.

12 MS. DEITSCH-PEREZ: Deborah
13 Deitsch-Perez from Stinson, LLP,
14 representing Jim Dondero, Nancy Dondero,
15 HCRA, and HCMS.

16 MR. HORN: Warren Horn with Heller,
17 Draper & Horn in New Orleans representing
18 Dugaboy Investment Trust.

19 MR. RUKAVINA: Davor Rukavina with
20 Munsch Hardt Kopf & Harr in Dallas
21 representing NexPoint Advisors, LP and
22 Highland Capital Management Fund Advisors,
23 L.P.

24 MR. AIGEN: Michael Aigen from
25 Stinson, and I represent the same parties

1 WATERHOUSE - 10-19-21

2 as Deborah Deitsch-Perez.

3 MS. NEWMAN: This is Deborah Newman
4 from Quinn Emanuel. We represent the
5 litigation -- Marc Kirschner as the trustee
6 for the litigation SunTrust.

7 MR. MORRIS: I think that is
8 everybody.

9 VIDEOGRAPHER: Thank you. Will the
10 court reporter please swear in the witness.

11 FRANK WATERHOUSE,
12 having been first duly sworn, testified as
13 follows:

14 EXAMINATION

15 BY MR. MORRIS:

16 Q. Please state your name for the
17 record.

18 A. My name is Frank Waterhouse.

19 Q. Good morning, Mr. Waterhouse. I'm
20 John Morris, as you know, from Pachulski Stang
21 Ziehl & Jones. You understand that my firm and
22 I represent Highland Capital Management, L.P.;
23 is that right?

24 A. Yes.

25 Q. Okay. And do you understand that

1 WATERHOUSE - 10-19-21

2 we're here today for your deposition in your
3 individual capacity?

4 A. Yes.

5 Q. Did you review and -- did you
6 receive and review a subpoena that Highland
7 Capital Management, L.P., served upon you?

8 A. Yes.

9 Q. You have been deposed before; right?

10 A. Yes.

11 Q. How many times have you been
12 deposed?

13 A. About three or four times.

14 Q. Okay. And I defended you in one
15 deposition; isn't that right?

16 A. That is correct.

17 Q. So the general ground rules for this
18 deposition are largely the same as the
19 depositions you have given before. And that is
20 I will ask you a series of questions, and it is
21 important that you allow me to finish my
22 question before you begin your answer; is that
23 fair?

24 A. Yes.

25 Q. And it is important that I allow you

1 WATERHOUSE - 10-19-21

2 to finish your answers before I begin a
3 question, but if I fail to do that, will you
4 let me know?

5 A. I can certainly do that.

6 Q. Okay. Do you understand that this
7 deposition is being videotaped?

8 A. Yes.

9 Q. You understand that I may seek to
10 use portions of the videotape in a court of
11 law?

12 A. I did not know that, until you just
13 said that.

14 Q. Okay. And you are aware of that now
15 before the deposition begins substantively; is
16 that right?

17 A. Yes.

18 Q. So unlike I think the other
19 depositions that you have given, this one is
20 being given remotely. So that presents some
21 unique challenges, at least as compared to a
22 deposition that is taken in-person.

23 From time to time we're going to put
24 documents up on the screen, Mr. Waterhouse.
25 And it is important that I give you the

1 WATERHOUSE - 10-19-21

2 opportunity to review any portion of the
3 document that you think you need in order to
4 fully and completely answer the question.

5 So I would ask you to let me know if
6 there is a portion of a document that you need
7 to see in order to fully and completely answer
8 the question. Can you do that for me?

9 A. Yes.

10 MS. DANDENEAU: Mr. Morris, I would
11 just note that we do have hard copies of
12 the documents that you sent, so if you can
13 just refer to the exhibit number as
14 reflected in the documents that you sent,
15 Mr. Waterhouse will be able to look at the
16 hard copies of those documents.

17 MR. MORRIS: I appreciate that,
18 and -- and I will encourage him to do so.
19 There will be other documents that we did
20 not send to you that we'll be using today
21 though.

22 Q. Okay. With that as background, if
23 there is anything that I ask you, sir, that you
24 don't understand, will you let me know?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Are you currently employed?

3 A. Yes.

4 Q. By whom?

5 A. The Skyview Group.

6 Q. When did you become employed by the
7 Skyview Group?

8 A. I believe March 1st of 2021.

9 Q. Do you have a title at Skyview?

10 A. Yes.

11 Q. What is your title?

12 A. My title is chief financial officer.

13 Q. Do you report to anybody in your
14 role as CFO?

15 A. I don't, no.

16 Q. No. Is there a president or a CEO
17 of Skyview?

18 A. Yes.

19 Q. Who is that?

20 A. That is Scott Ellington.

21 Q. But you don't report to
22 Mr. Ellington; is that right?

23 A. I don't think so.

24 Q. Does Skyview Group --

25 MS. DANDENEAU: Excuse me, we --

1 WATERHOUSE - 10-19-21

2 A. I -- I -- I might. I just -- I
3 don't recall.

4 Q. Okay. Does Skyview Group provide
5 any services to any entity directly or
6 indirectly owned or controlled by Jim Dondero?

7 A. Yes.

8 Q. Can you name -- is that pursuant to
9 written contracts?

10 A. Yes.

11 Q. And do you know how many contracts
12 exist?

13 A. Approximately six or so.

14 Q. And is the Skyview Group made up of
15 individuals who were formerly employees of
16 Highland Capital Management, L.P.?

17 A. No.

18 Q. Do you know how many -- how many --
19 how many employees does Skyview have?

20 A. Approximately 35.

21 Q. And can you tell me how many of
22 those 35 are former officers, directors, or
23 employees of Highland Capital Management, L.P.?

24 A. I don't know the exact number.

25 Q. Is it more than 20?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Is it more than 30?

4 A. I don't know.

5 Q. Can you tell me what portion of
6 Skyview -- Skyview's revenue is derived from
7 entities that are directly or indirectly owned
8 or controlled by Jim Dondero?

9 MS. DANDENEAU: Mr. Morris, I mean,
10 you called Mr. Waterhouse here individually
11 for purposes of his testimony in connection
12 with the noticed litigation. I have given
13 you some leeway to ask him some background
14 information about Skyview Group, but this
15 is not a substitute for a deposition in
16 connection with any other pending disputes
17 that exist. And -- and we agreed to accept
18 the subpoena on the basis of he -- this is
19 testimony that he is giving in connection
20 with the noticed litigation.

21 I really think that you are now
22 going a little bit far afield from the
23 purpose of this deposition.

24 MR. MORRIS: Okay. It is -- I'm not
25 intending to use these -- the answers to

1 WATERHOUSE - 10-19-21

2 these questions for any purpose other than
3 this litigation. I think you understand
4 fully why I'm asking the questions, and I
5 just have a couple more, if you will bear
6 with me.

7 MS. DANDENEAU: Okay.

8 MS. DEITSCH-PEREZ: Can we have an
9 agreement that an objection by one is an
10 objection for any other party here?

11 MR. MORRIS: Sure. I would -- I
12 would encourage that, sure.

13 MS. DEITSCH-PEREZ: Thank you.

14 MR. MORRIS: It can't be sustained
15 or overruled more than one time, so...

16 Q. Mr. Waterhouse, can you answer my
17 question, please.

18 MS. DANDENEAU: Do you want to
19 repeat it, Mr. Morris, for his benefit?

20 MR. MORRIS: Sure.

21 Q. Can you -- can you tell me the
22 approximate portion of Skyview's revenue that
23 is derived from entities that are directly or
24 indirectly owned or controlled by Mr. Dondero?

25 A. I don't know the exact number.

1 WATERHOUSE - 10-19-21

2 Q. Is it more than 75 percent?

3 A. Yes.

4 Q. Is it more than 90 percent?

5 A. I don't know.

6 Q. Okay. Can I refer to Highland
7 Capital Management, L.P., as Highland?

8 A. Yes.

9 Q. All right. And you previously
10 served as Highland's CFO; correct?

11 A. Yes.

12 Q. When did you join Highland?

13 A. I don't recall the exact date.

14 Q. Can you tell me what year?

15 A. 2006.

16 Q. When did you -- in what year did you
17 become Highland's CFO?

18 A. I don't recall the exact date.

19 Q. I'm not asking you for the exact
20 date. I'm asking you if you recall the year in
21 which you were appointed CFO.

22 A. I don't recall the exact year.

23 Q. Can you tell me which years it is
24 possible that you were appointed to CFO of
25 Highland?

1 WATERHOUSE - 10-19-21

2 A. 2011 or 2012.

3 Q. Did you serve as Highland's CFO on a
4 continuous basis from in or around 2011 or 2012
5 until early 2021?

6 A. Yes.

7 Q. During that entire time you reported
8 directly to Jim Dondero; correct?

9 A. I -- I don't know.

10 Q. Is there anybody else you reported
11 to -- withdrawn.

12 Did you report to Mr. Dondero for
13 some portion of the time that you served as
14 CFO?

15 A. Yes.

16 Q. Is there a portion of time that you
17 don't recall who you reported to?

18 A. Yes.

19 Q. What portion of time do you have in
20 your mind when you can't recall who you
21 reported to?

22 A. From the 2011 to -- for
23 approximately a year or two.

24 Q. Okay. So is it fair to say that you
25 reported to Mr. Dondero in your capacity as CFO

1 WATERHOUSE - 10-19-21

2 from at least 2014 until the time you left
3 Highland?

4 MS. DANDENEAU: Objection to form.

5 A. I don't want to speculate the exact
6 or what year that changed or -- so I would like
7 to stick with my testimony.

8 Q. Can you recall when you began
9 reporting to Mr. Dondero?

10 A. I don't recall.

11 Q. Can you -- can you give me an
12 estimate of what year you think you might have
13 began reporting to Mr. Dondero?

14 A. I will go back to my prior
15 testimony.

16 Q. Okay. There is no -- you have no
17 ability to tell me when you began reporting to
18 Mr. Dondero.

19 Do I have that right?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall.

22 Q. Okay. Do you recall who you might
23 have reported to before you began reporting to
24 Mr. Dondero?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Who might you have reported to in
3 your capacity as CFO before you started
4 reporting to Mr. Dondero?

5 A. That would have been Patrick Boyce.

6 Q. Are you aware that Highland filed
7 for bankruptcy on October 19th, 2019?

8 A. Yes.

9 Q. And we refer to that as the petition
10 date?

11 A. Yes.

12 Q. Okay. Do you hold any professional
13 licenses, sir?

14 A. Yes.

15 Q. Can you tell me what professional
16 licenses you hold?

17 A. I'm a certified public accountant.

18 Q. Okay. Anything else?

19 A. No.

20 Q. Do you have any other professional
21 licenses or certificates?

22 A. When you say "professional license,"
23 that is not education?

24 Q. Tell me -- sure. Anything other
25 than a driver's license.

1 WATERHOUSE - 10-19-21

2 Do you have any other license or
3 certificate or certification?

4 A. Are you asking, like, where I went
5 to school and the --

6 Q. I am not. I am not. I didn't say
7 education. I didn't ask about degrees.

8 Do you know what a license is?

9 A. Well, yeah, I mean, a license is
10 something you get after you receive a certain
11 level of proficiency.

12 Q. Do you have any licenses or
13 certifications other than your CPA?

14 MS. DANDENEAU: Objection, form.

15 I assume you mean professional
16 licenses, Mr. Morris; correct?

17 Q. Can you answer my question, sir?

18 A. Mr. Morris, I'm thinking. I
19 don't -- I don't think I have any others.

20 Q. Are you familiar with an entity
21 called Highland Capital Management Fund
22 Advisors?

23 A. Yes.

24 Q. Were you ever -- can we refer to
25 that entity as HCMFA?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Were you ever employed by HCMFA?

4 A. Not that I recall.

5 Q. Were you ever -- did you ever hold
6 the title of an officer or director of HCMFA?

7 A. Yes.

8 Q. What title did you hold?

9 A. Treasurer.

10 Q. When did you become the treasurer of
11 HCMFA?

12 A. I don't recall.

13 Q. Can you tell me the year?

14 A. I don't -- I don't know the year.

15 Q. Can you approximate the year in
16 which you became the treasurer of HCMFA?

17 A. I don't know.

18 Q. Can you tell me if it was before or
19 after 2016?

20 A. I don't recall.

21 Q. Are you still the -- do you know if
22 you're still the treasurer of HCMFA today?

23 A. Today, I am the acting treasurer for
24 HCMFA.

25 Q. Is there a distinction between

1 WATERHOUSE - 10-19-21

2 treasurer and acting treasurer?

3 A. I said "acting treasurer" as I am an
4 employee of Skyview, as you previously
5 stated -- or asked.

6 Q. But you are the treasurer of HCMFA
7 today; correct?

8 A. I am -- I am the acting treasurer
9 for HCMFA.

10 Q. How did you become the treasurer of
11 HCMFA?

12 A. Are you asking how I became the
13 treasurer of HCMFA today?

14 Q. How did you become appointed to
15 serve as the treasurer of HCMFA?

16 A. Well, in -- in -- in what time
17 capacity?

18 Q. The first time that you were
19 appointed.

20 A. First time. I believe I was asked
21 to serve as treasurer for HCMFA the first time.

22 Q. By who? Who asked you to do that?

23 A. I don't recall.

24 Q. Is there anything that would refresh
25 your recollection as to who appointed you as

1 WATERHOUSE - 10-19-21

2 the treasurer of CF- -- HCMFA for the first
3 time?

4 A. I don't -- I mean, there would be
5 some documents, some legal documents. I don't
6 know where those are.

7 Q. How many times have you been
8 appointed the treasurer of HCMFA?

9 A. I don't know.

10 Q. Was it more than once?

11 A. I don't know.

12 Q. Can you tell me any period of time
13 since 2016 that you did not hold the title of
14 treasurer of HCMFA?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall.

17 Q. What are your duties and
18 responsibilities as the treasurer of HCMFA?

19 A. My duties are to do the best job
20 that I can as the -- as an accountant and
21 finance guy.

22 Q. What specific duties and
23 responsibilities do you have as the treasurer
24 of HCMFA?

25 A. My duties are to do the best job

1 WATERHOUSE - 10-19-21

2 that I can as the accounting and finance person
3 for HCMFA.

4 Q. As the accounting and finance person
5 for HCMFA, do you have any particular areas of
6 responsibility?

7 A. Yeah, it is to manage the accounting
8 and finance function for HCMFA.

9 Q. Would that include -- do you have
10 responsibility for overseeing HCMFA's annual
11 audit?

12 A. Can I please elaborate on my prior
13 question?

14 Q. Of course. You -- you are giving
15 answers. I'm asking questions.

16 A. Okay. Yes, so the -- it -- like I
17 said, it is to manage the accounting finance
18 aspect, but I am, as we discussed, the
19 treasurer. That is -- being treasurer is what
20 gives me that -- that management function.

21 Q. Does anybody report to you in your
22 capacity as treasurer of HCMFA?

23 A. I don't believe so.

24 Q. Does HCMFA have a chief financial
25 officer?

1 WATERHOUSE - 10-19-21

2 A. I don't -- I don't know.

3 Q. You don't know?

4 You're the treasurer of HCMFA but
5 you don't know if HCMFA has a chief financial
6 officer.

7 Do I have that right?

8 A. That's right.

9 Q. Okay. Have you heard of a company
10 called NexPoint Advisors?

11 A. Yes.

12 Q. We will refer to that as NexPoint.
13 Okay?

14 A. Okay.

15 Q. Were you ever employed by NexPoint?

16 A. I don't recall.

17 Q. Did you ever hold any title with
18 respect to the entity known as NexPoint?

19 A. Yes.

20 Q. What titles have you held in
21 relation to NexPoint?

22 A. Treasurer. I think it was only
23 treasurer.

24 Q. Can you tell me the approximate year
25 you became the treasurer of NexPoint?

1 WATERHOUSE - 10-19-21

2 A. I don't know.

3 Q. Are you still the treasurer of
4 NexPoint today?

5 A. I am the acting treasurer for
6 NexPoint.

7 Q. When did your title change from
8 treasurer to acting treasurer?

9 A. I don't know.

10 Q. Did your duties and responsibilities
11 change at all when your title was changed from
12 treasurer to acting treasurer?

13 A. I don't -- I don't believe so.

14 Q. Why did --

15 A. I still manage the finance and
16 accounting function for NexPoint.

17 Q. Why did your title change from
18 treasurer to acting treasurer?

19 A. I don't -- I'm using the term
20 "acting treasurer" as I'm a Skyview employee.
21 I don't -- I don't know -- again, I am a -- as
22 I am the Skyview employee.

23 Q. Okay.

24 A. And we -- we provide officer
25 services.

1 WATERHOUSE - 10-19-21

2 Q. And you serve as an officer of
3 HCMFA; correct?

4 A. I think we went over that with my
5 testimony. Yes, I'm the acting treasurer for
6 HCMFA.

7 Q. And you are an officer of NexPoint;
8 correct?

9 A. I think -- I am the acting treasurer
10 for NexPoint Advisors.

11 Q. And -- and who appointed you acting
12 treasurer of NexPoint Advisors?

13 A. I don't recall specifically.

14 Q. Do you have any recollection of who
15 might have appointed you the treasurer of
16 NexPoint?

17 A. I mean, it -- it -- I don't recall
18 exactly who it was.

19 Q. Who were the possibilities?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 Q. You can answer.

23 A. Someone in the legal group for
24 NexPoint. The other officers as well.

25 Q. Have you heard of a company called

1 WATERHOUSE - 10-19-21

2 Highland Capital Management Services, Inc.?

3 A. Yes.

4 Q. We will refer to that as HCMS.

5 Okay?

6 A. HCMS. Okay.

7 Q. Were you ever employed by HCMS?

8 A. No.

9 Q. Have you ever held any titles in
10 relation to HCMF -- I apologize -- HCMS?

11 A. Yes.

12 Q. What titles have you held in
13 relation to HCMS?

14 A. Treasurer and acting treasurer.

15 Q. When did you first become treasurer
16 or acting treasurer of HCMS?

17 A. I don't recall the exact dates.

18 Q. Can you recall -- can you
19 approximate the year that you became the
20 treasurer of HCMS?

21 A. I don't -- I don't know.

22 Q. Are you still the treasurer of HCMS
23 today?

24 A. I am the acting treasurer for HCMS.

25 Q. And are your duties and

1 WATERHOUSE - 10-19-21

2 responsibilities as the acting treasurer for
3 HCMS and the acting treasurer for NexPoint the
4 same as your duties and responsibilities in
5 your role as the acting treasurer of HCMFA?

6 A. More or less.

7 Q. Have you ever heard of a company
8 called HCRE Partners, LLC?

9 A. Yes.

10 Q. And do you understand that that
11 entity is now known today as NexPoint Real
12 Estate Partners?

13 A. I did not know that.

14 Q. All right. Can we refer to HCRE
15 Partners as HCRE?

16 MS. DANDENEAU: Objection to form.

17 Did you mean NexPoint Real Estate
18 Partners, Mr. Morris?

19 MR. MORRIS: No.

20 MS. DANDENEAU: Oh.

21 MR. MORRIS: He said he wasn't
22 familiar that it was succeeded by that
23 entity. So --

24 MS. DANDENEAU: Okay.

25 MR. MORRIS: -- let's go with what

1 WATERHOUSE - 10-19-21

2 the witness knows.

3 Q. You're familiar with an entity
4 called HCRE Partners, LLC; correct?

5 A. Yes.

6 Q. Okay. So that is the entity that we
7 will refer to as HCRE. If you're aware of any
8 successor, that is great. If not, let's just
9 define it as such.

10 Have you ever been employed by HCRE
11 or any entity that you know to have succeeded
12 HCRE?

13 A. No.

14 Q. Did you ever serve as an officer or
15 director of HCRE or any successor?

16 A. Not that I recall.

17 Q. Okay. Can we refer to NexPoint and
18 HCMFA as the advisors?

19 A. Yes.

20 Q. In general, the advisors provided
21 investment advisory services to certain retail
22 funds; correct?

23 A. Yes.

24 Q. And we will refer to the retail
25 funds that are served by the advisors

1 WATERHOUSE - 10-19-21

2 collectively as the retail funds; is that okay?

3 A. Okay.

4 Q. Each of the retail funds is governed
5 by a board; correct?

6 A. Yes.

7 Q. And do you know the people who serve
8 on the boards of the retail funds?

9 MS. DANDENEAU: Objection to form.

10 A. I don't know all of them.

11 Q. Do you know whether the same people
12 serve on the board of each of the retail funds
13 as we've defined that term?

14 A. Which -- so when you say "retail
15 funds" -- again, I want to be -- what retail
16 funds are you referring to, because there are
17 -- there are several distinctions?

18 What retail funds are you using when
19 you refer to them?

20 Q. That is why -- that is why I tried
21 to define the terms. So let me do it again.

22 Retail funds for the purposes of
23 this deposition means any retail fund to which
24 either of the advisors provides advisory
25 services. Okay?

1 WATERHOUSE - 10-19-21

2 A. Okay.

3 Q. Okay. So do you know whether the
4 same people serve on the board of each of the
5 retail funds?

6 A. I don't know.

7 Q. Were you ever employed by any of the
8 retail funds?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Okay. Do you have any title with
13 respect to any of the retail funds?

14 A. Yes.

15 Q. What titles do you hold --
16 withdrawn.

17 Do you have the same titles with
18 respect to all of the retail funds or do
19 they -- or just something else?

20 MS. DANDENEAU: Objection to form.

21 Q. Withdrawn.

22 Do you have the same title with
23 respect to each of the retail funds?

24 A. No.

25 Q. Tell me which title you have with

1 WATERHOUSE - 10-19-21

2 respect to each retail fund.

3 Actually, let's do it a different
4 way. I withdraw the question.

5 Can you give me one title you have
6 in relation to any retail fund?

7 A. Yes.

8 Q. What title -- what title can you
9 give me?

10 A. Principal executive officer.

11 Q. Do you serve as principal executive
12 officer for each of the retail funds?

13 A. No.

14 Q. Can you identify for me the retail
15 funds in which you serve as the principal
16 executive officer?

17 A. Yes. Highland Funds 1, Highland
18 Funds 2, Highland Income Fund, Highland Global
19 Allocation Fund.

20 Q. I'm sorry, you said "Global
21 Allocation Fund"?

22 A. Yes.

23 VIDEOGRAPHER: Excuse me,

24 Mr. Morris. This is the videographer. I'm
25 concerned about the lighting in the

1 WATERHOUSE - 10-19-21

2 witness' camera.

3 Do you want to go off the record and
4 make some adjustments?

5 MR. MORRIS: Sure, but just for this
6 purpose. I don't want to take a break. We
7 just started.

8 MS. DANDENEAU: Yeah, that is fine.
9 That is fine. We're going to put you on
10 mute.

11 MR. MORRIS: All right.

12 MS. DANDENEAU: I'm going to try to
13 open up some of the shades.

14 VIDEOGRAPHER: We're going off the
15 record at 10:08 a.m.

16 (Recess taken 10:08 a.m. to 10:11 a.m.)

17 VIDEOGRAPHER: We are back on the
18 record at 10:11 a.m.

19 Q. Mr. Waterhouse, when did you become
20 the principal executive officer of the four
21 retail funds that you just identified?

22 A. I don't recall.

23 Q. Do you recall the approximate year
24 that you became the principal executive officer
25 of the four funds?

1 WATERHOUSE - 10-19-21

2 A. 2021.

3 Q. Did you ever hold any title with
4 respect to any of the four funds you have just
5 identified other than principal executive
6 officer?

7 A. I don't recall.

8 Q. Is it possible that you held a
9 position or a title with the four funds you
10 just identified prior to 2021?

11 A. Yes.

12 Q. But you don't recall if you did or
13 not; do I have that right?

14 A. No. You -- I thought you asked, did
15 I hold other titles.

16 Q. Did you hold any title at the four
17 retail funds for which you now serve as
18 principal executive officer at any time prior
19 to 2021?

20 A. Yes.

21 Q. What titles did you hold?

22 A. I don't recall all the titles.

23 Q. Do you recall any of the titles?

24 A. Yes.

25 Q. What titles do you recall holding at

1 WATERHOUSE - 10-19-21

2 those four retail funds before 2021?

3 A. Principal executive officer.

4 Q. Were you the principal executive
5 officer of the four retail funds that you have
6 identified?

7 A. Sorry, could you repeat the
8 question?

9 Q. Were you the principal executive
10 officer for each of the four retail funds that
11 you have identified?

12 A. Yes.

13 Q. When did you become the principal
14 executive -- withdrawn.

15 Can you give me the approximate year
16 that you became the principal executive officer
17 for each of the four retail funds you've
18 identified?

19 A. I don't recall.

20 Q. What are your duties and
21 responsibilities as the principal executive
22 officer of these four retail funds?

23 A. It is to manage the finance and
24 accounting positions.

25 Q. So at the same time you serve as the

1 WATERHOUSE - 10-19-21

2 treasurer of the advisors, you also serve as
3 the principal executive officer of these four
4 retail funds; correct?

5 A. Yes.

6 Q. Did you ever hold any title with
7 respect to any other retail fund?

8 A. Not that I recall.

9 Q. During the period that you served as
10 Highland's CFO, from time to time Highland
11 loaned money to certain of its officers and
12 employees; correct?

13 A. Yes.

14 Q. During the period that you served as
15 Highland's CFO, from time to time Highland
16 loaned money to certain --

17 A. Let me -- let me retract that,
18 sorry, that -- you asked during the time I was
19 CFO, Highland loaned moneys to employees. I
20 don't -- I don't recall that during my tenure
21 of CFO.

22 Q. You have no recollection during the
23 time that you were the CFO of Highland of
24 Highland ever loaning any money to any officer
25 or director of Highland?

1 WATERHOUSE - 10-19-21

2 A. I don't recall during my tenure of
3 Highland or my -- as CFO of Highland -- yeah,
4 if there are any loans as CFO of Highland.

5 Q. I'm just talking about officers and
6 employees right now. You have no recollection
7 of Highland ever making a loan to any of its
8 officers or employees during the time that you
9 served as CFO. Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. So I thought you were saying
12 officers and employees as CFO, right, so there
13 were -- I mean, okay, yes.

14 Q. I would ask you to listen carefully
15 to my question. If I -- if I'm not clear, let
16 me know, but I'm really trying to be as clear
17 as I can.

18 A. I'm listening as carefully as I can,
19 and you are asking very specific questions in a
20 timeline. And I'm trying to answer your
21 questions as specifically as I can, and I
22 apologize if -- if I'm going back. I am -- you
23 are asking very specific questions. Thank you.

24 Q. During the period that you served as
25 Highland's CFO, from time to time Highland

1 WATERHOUSE - 10-19-21

2 loaned money to certain corporate affiliates;
3 correct?

4 MS. DANDENEAU: Objection to form.

5 A. What are corporate affiliates?

6 Q. How about the ones that are in
7 Highland's audited financial statements under
8 the section entitled Loans to Affiliates. Why
9 don't we start with those. Do you have any
10 understanding of what the phrase "affiliates"
11 means?

12 MS. DANDENEAU: Objection to form.

13 A. I understand what affiliates are,
14 yet affiliates can have different meanings in
15 different contexts, so...

16 Q. Why don't you -- why don't you tell
17 me what your understanding of the term
18 "affiliate" is in relation to Highland Capital
19 Management, L.P.

20 A. Is that a -- it depends on the
21 context.

22 Q. How about the context of making
23 loans?

24 MS. DANDENEAU: Objection to form.

25 A. I didn't make the determination of

1 WATERHOUSE - 10-19-21

2 who an affiliate was or is at the time those --
3 I didn't -- that wasn't my job to make a
4 determination of who an affiliate is.

5 Q. All right. So as the CFO of
6 Highland, do you have any ability right now to
7 tell me which companies that were directly or
8 indirectly owned and/or controlled by
9 Mr. Dondero in whole or in part received loans
10 from Highland Capital Management, L.P.?

11 MS. DANDENEAU: Objection to form.

12 MS. DEITSCH-PEREZ: Objection, form.

13 A. Yes.

14 Q. Okay. Identify every entity that
15 you can think of that was directly or
16 indirectly owned and/or controlled by
17 Mr. Dondero in whole or in part that received a
18 loan from Highland Capital Management, L.P.

19 MR. RUKAVINA: Objection, legal
20 conclusion.

21 A. NexPoint Advisors, Highland Capital
22 Management Fund Advisors, HCM Services,
23 Dugaboy. Sorry, I don't think -- Dugaboy
24 doesn't fit that definition. You said owned
25 and controlled. I don't think that that

1 WATERHOUSE - 10-19-21

2 definition --

3 Q. I said owned and/or controlled.

4 A. I don't -- again, I'm not -- I'm not
5 the legal expert. I don't think it controls --
6 he controls Dugaboy, so again, I'm not the
7 legal person.

8 Q. I'm not asking you for a legal
9 conclusion, sir. I'm asking you for your
10 knowledge, okay, as the CFO -- the former CFO
11 of Highland Capital Management, other than
12 NexPoint, HCMFA, and HCMF -- HCMS, can you
13 think of any other entities that were owned
14 and/or controlled directly or indirectly in
15 whole or in part by Jim Dondero who received a
16 loan from Highland Capital Management, L.P.?

17 MS. DANDENEAU: Objection to form.

18 A. HCRE.

19 Q. Any others?

20 A. That is -- that is all I can think
21 of.

22 Q. And you're aware that from time to
23 time while you were the CFO, Highland loaned
24 money to Jim Dondero; correct?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Can we refer to the four
3 entities that you just named and Mr. Dondero as
4 the affiliates?

5 A. So that would be Jim Dondero,
6 NexPoint Advisors, Highland Capital Management
7 Fund Advisors, and HCRE.

8 Q. And HCMS?

9 A. And HCMS, okay.

10 Q. And can we refer to the loans that
11 were given to each of those affiliates as the
12 affiliate loans?

13 A. Yes.

14 Q. And is it fair to say that each of
15 the affiliates were the borrowers under the
16 affiliate loans as we're defining the term?

17 MR. RUKAVINA: Objection, legal
18 conclusion.

19 A. The borrowers are whoever were on
20 the notes. I don't -- I don't know. I'm not
21 the legal person.

22 Q. But you --

23 A. I don't know.

24 Q. You do know, as Highland's former
25 CFO, that each of the affiliates that you have

1 WATERHOUSE - 10-19-21

2 identified tendered notes to Highland; correct?

3 MR. RUKAVINA: Hey, John, will you
4 just give me a running objection to legal
5 conclusion to HCM --

6 MR. MORRIS: No. No, if you want to
7 object --

8 MR. RUKAVINA: I will object every
9 time. Object to legal conclusion.

10 MR. MORRIS: That is fine.

11 A. Sorry, can you repeat the question?

12 Q. Are you aware that each of the --
13 that each of the affiliates, as we have defined
14 the term, gave to Highland a promissory note in
15 exchange for the loans?

16 MR. RUKAVINA: Objection to the
17 extent that calls for a legal conclusion.

18 A. I don't.

19 Q. No, you don't know that?

20 A. No, they didn't -- you said they
21 exchanged a promissory note for a loan. I
22 don't -- I don't understand that question, so I
23 said no.

24 Q. At the time of the bankruptcy
25 filing, did Highland have in its possession

1 WATERHOUSE - 10-19-21

2 promissory notes that were signed by each of
3 the affiliates?

4 A. Yes.

5 Q. To the best of your knowledge,
6 during the time that you served as Highland's
7 CFO, did Highland disclose to its outside
8 auditors all of the loans that were made to
9 affiliates?

10 MR. RUKAVINA: Objection, that calls
11 for a legal conclusion.

12 MS. DEITSCH-PEREZ: I also couldn't
13 hear you, John, because there was some
14 garbling on -- on the -- on the call.

15 MR. MORRIS: Folks, I've got to tell
16 you this is not going well, and I'm
17 reserving my right --

18 MS. DANDENEAU: John, it was just
19 the end of that question. It was just the
20 end of that question. I couldn't hear it
21 either. Sorry, if you could repeat it,
22 please.

23 MR. MORRIS: That is less than an
24 hour into this, but folks are trying to run
25 out the clock, and so I'm just going to

1 WATERHOUSE - 10-19-21

2 state that now.

3 MS. DANDENEAU: You know, and,
4 Mr. Morris, I really object to that. I
5 mean --

6 MR. MORRIS: Okay.

7 MS. DANDENEAU: -- Mr. Waterhouse
8 just told you he's trying to listen to your
9 questions and answer them carefully, and
10 you have no basis for saying that.

11 MR. MORRIS: Okay.

12 MS. DANDENEAU: This does not --
13 this is not an experienced witness, so he's
14 trying to do the best he can.

15 Q. Mr. Waterhouse, during the time that
16 you served as Highland's CFO, did Highland
17 disclose to its outside auditors all of the
18 loans that it made to each of the affiliates
19 that you have identified?

20 MR. RUKAVINA: Objection, legal
21 conclusion.

22 A. Yes.

23 Q. To the best of your knowledge, while
24 you were Highland's CFO, were all of the
25 affiliate loans described in Highland's audited

1 WATERHOUSE - 10-19-21

2 financial statements?

3 MR. RUKAVINA: Objection, legal
4 conclusion.

5 A. When an audit was performed, any
6 loans that were made by Highland to the
7 affiliates were disclosed to auditors.

8 Q. Are you aware of any loan that was
9 made to any affiliate that was not disclosed to
10 the auditors?

11 A. I'm not aware.

12 Q. To the best of your knowledge, did
13 each of the affiliates who were --
14 (inaudible) -- loaned from Highland execute a
15 promissory note in connection with that loan?

16 MR. RUKAVINA: Objection, legal
17 conclusion.

18 A. Sorry, you -- halfway through the
19 question it got muffled.

20 Can you repeat that again?

21 Q. To the best of your knowledge, did
22 every affiliate execute a promissory note in
23 connection with each loan that it obtained from
24 Highland?

25 MR. RUKAVINA: Objection, legal

1 WATERHOUSE - 10-19-21

2 conclusion.

3 A. Yes.

4 Q. You are not aware of any loan that
5 any affiliate ever obtained from Highland where
6 the affiliate did not give a promissory note in
7 return; is that fair?

8 A. Yes, I'm not aware.

9 Q. And to the best of your knowledge,
10 did Highland loan to each affiliate an amount
11 of money equal to the principal amount of each
12 promissory note?

13 MR. RUKAVINA: Objection, legal
14 conclusion.

15 A. Yes.

16 Q. During the time that you served as
17 CFO, did Highland ever loan money to
18 Mark Okada?

19 A. I -- I don't recall.

20 Q. Did you ever see any promissory
21 notes executed by Mark Okada?

22 A. I don't recall.

23 Q. Do you know if Highland ever forgave
24 any loan that it ever made to Mr. Okada?

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Do you recall if Mr. Okada paid back
3 all principal and interest due and owing under
4 any loan he obtained from Highland?

5 MS. DEITSCH-PEREZ: Objection to
6 form.

7 MS. DANDENEAU: Objection to form.

8 A. I don't recall.

9 Q. Do you recall whether -- during your
10 time as CFO, whether Highland ever loaned money
11 to Jim Dondero?

12 A. Yes.

13 Q. To the best of your knowledge, did
14 Mr. Dondero sign and deliver to Highland a
15 promissory note in connection with each loan
16 that he obtained from Highland?

17 A. If you are referring to the
18 promissory notes that, you know, part of
19 Highland's records, yes.

20 Q. Okay. You're not aware of any loan
21 that Mr. Dondero took from Highland that wasn't
22 backed up by -- by a promissory note with a
23 face -- with a principal amount equal to the
24 amount of the loan; correct?

25 A. Am I aware that Jim Dondero took a

1 WATERHOUSE - 10-19-21

2 loan?

3 Q. Without giving a -- let me ask a
4 better question. I'm sorry, Mr. Waterhouse.

5 Are you aware of any loan that
6 Mr. Dondero obtained from Highland where he
7 didn't give a promissory note in return?

8 A. I'm not aware.

9 Q. During the time that you served as
10 Highland's CFO, did Highland ever forgive any
11 loans, in whole or in part, that it made to
12 Mr. Dondero?

13 A. Not that I'm aware.

14 Q. At the time that you served as
15 Highland's CFO, did Highland ever forgive any
16 loan, in whole or in part, that it made to any
17 affiliate as we've defined the term today?

18 A. Not that I'm aware.

19 Q. During the time that you served as
20 Highland's CFO, did Highland ever forgive, in
21 whole or in part, any loan that it ever made to
22 any officer or employee?

23 A. Highland forgave loans to officers
24 and employees. It may not have been at the
25 time when my title was CFO.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And so I appreciate the
3 distinction.

4 Is it fair to say that, to the best
5 of your knowledge, Highland did not forgive a
6 loan that it made to an officer or employee
7 after 2013?

8 MS. DANDENEAU: Objection to form.

9 A. I don't recall.

10 Q. To the best of your knowledge, did
11 Highland disclose to its auditors every
12 instance where it forgave, in whole or in part,
13 a loan that it had made to one of its officers
14 or employees?

15 A. No.

16 Q. Can you think of -- can you -- can
17 you identify any loan to an officer or employee
18 that was forgiven by Highland, in whole or in
19 part, that was not disclosed to Highland's
20 outside auditors?

21 A. Look, I don't recall all of the
22 loans and the loan forgiveness. I just know as
23 part of the audit process there is a
24 materiality concept.

25 So if there were loans to employees

1 WATERHOUSE - 10-19-21

2 that were of -- you know, that were deemed
3 immaterial, those items may not have been
4 disclosed by the team to the auditors.

5 Q. I appreciate that.

6 Do you have an understanding as to
7 what the level of materiality was?

8 A. I don't recall.

9 Q. As the CFO of Highland, to the best
10 of your knowledge, did Highland disclose to its
11 outside auditors every loan that was forgiven,
12 in whole or in part, that was material as that
13 term was defined by the outside auditors?

14 A. Yes.

15 Q. And do you recall where -- do you
16 recall where the definition of materiality can
17 be found for -- for this particular purpose?

18 MS. DANDENEAU: Objection to form.

19 A. No. You -- I don't determine
20 materiality.

21 Q. Okay. I'm just asking you if you
22 can help me understand where it is, but I think
23 we will find it in a few minutes.

24 You are aware that Highland has
25 commenced lawsuits against each of the

1 WATERHOUSE - 10-19-21

2 affiliates, as we've defined the term, to
3 collect under certain promissory notes; is that
4 right?

5 A. Yes.

6 Q. And are you familiar with the notes
7 that are issue -- at issue in the lawsuits?

8 MS. DANDENEAU: Objection to form.

9 A. Generally familiar.

10 Q. Can we refer to the lawsuits that
11 Highland has commenced against the affiliates
12 collectively as the lawsuits?

13 A. Yes. And, again, the affiliates are
14 NexPoint, HCMFA, HCMS, and HCRE.

15 Q. And Mr. Dondero?

16 A. Okay. See, that is a new -- and now
17 Mr. Dondero is included in your affiliate
18 definition.

19 Q. I just --

20 A. I thought affiliates -- I thought
21 affiliates were just the four prior entities,
22 so I just want to be clear.

23 Q. I appreciate that. So let's --
24 let's keep them separate and let's refer to the
25 four corporate entities as the affiliates, and

1 WATERHOUSE - 10-19-21

2 Mr. Dondero we will call Mr. Dondero. Okay?

3 A. Okay. Thank you. As you can see,
4 Mr. Morris, there is a lot of entities -- a lot
5 here. I just want to be clear.

6 Q. Okay. Now, the affiliates of
7 Mr. Dondero signed promissory notes that are
8 not subject to the lawsuit.

9 Do you understand that?

10 MS. DANDENEAU: Objection to form.

11 A. The affiliates and Mr. Dondero
12 signed --

13 Q. You know what? I will skip it.
14 That is okay. Okay.

15 From time to time while you were
16 Highland's CFO, payments were applied against
17 principal and interests that were due under the
18 notes that were tendered by the affiliates and
19 Mr. Dondero; correct?

20 MR. RUKAVINA: Objection to the
21 extent that calls for a legal conclusion.

22 A. Yes.

23 Q. Did Highland have a process where --
24 whereby payments would be applied against
25 principal and interest against the notes that

1 WATERHOUSE - 10-19-21

2 were given by the affiliates and Mr. Dondero?

3 A. Yes.

4 Q. Can you describe the process for me?

5 A. The process, payment should be
6 applied as laid out in the -- in the promissory
7 note.

8 Q. From time to time were payments made
9 that were not required under the promissory
10 notes?

11 MS. DANDENEAU: Objection to form.

12 A. Yes.

13 Q. Who was responsible for deciding
14 when and how much the payments would be made
15 with respect to each of the notes that were
16 issued by the affiliates and Mr. Dondero?

17 A. Who was responsible for deciding how
18 much was paid prior to the due date?

19 Q. Yes.

20 A. I don't know.

21 Q. Did you approve of each payment that
22 was made against principal and interest on the
23 notes that were given by the affiliates and
24 Mr. Dondero?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. Did I approve the payments? I
3 approve -- I approve -- if there was cash -- if
4 there was cash being repaid on a note payment,
5 yes, I approved in the general sense of being
6 made aware of the payment and the amount.

7 Q. And are you the person who
8 authorized Highland's employees to effectuate
9 those payments?

10 A. Yes.

11 Q. When you gave the instruction to
12 effectuate the payment, did you obtain
13 Mr. Dondero's prior approval?

14 A. I mean, it -- I mean, it -- it
15 depends.

16 Q. Can you think of any instance where
17 you directed Highland's employees to make a
18 payment of principal or interest against any
19 note that was tendered by an affiliate or
20 Mr. Dondero that Mr. Dondero did not approve of
21 in advance?

22 A. I can't recall specifically.

23 Q. Can you identify -- withdrawn.

24 Did Mr. Dondero ever tell you that a
25 payment that was made against principal and

1 WATERHOUSE - 10-19-21

2 interest due under one of the notes that was
3 tendered by an affiliate or himself should not
4 have been made?

5 A. Yes.

6 Q. Can you identify the payment for me?

7 A. It would be for -- for NexPoint
8 Advisors.

9 Q. Okay. And when did Mr. Dondero tell
10 you that a payment that you had initiated on
11 behalf of NexPoint should not have been made?

12 A. I wasn't initiating payment. It was
13 in the context of the -- I think you used this
14 term, "the advisors," so NexPoint Advisors and
15 Highland Capital Management Fund Advisors had
16 overpaid on certain agreements with Highland
17 Capital Management, L.P. And as a part of that
18 process, the advisors -- what I was told at the
19 time were in talks and negotiations and
20 discussions with Highland Capital Management,
21 L.P., on offsets in relation to those
22 overpayments.

23 Q. When did this conversation take
24 place?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. I don't recall specifically.

3 Q. Do you recall what year it was?

4 A. Yes.

5 Q. What year did the conversation with
6 Mr. Dondero take place that you just described?

7 A. 2020.

8 Q. Okay. Do you remember if it was
9 December 2020?

10 A. It -- it -- I don't -- I don't
11 recall what month specifically, but it would
12 have been November or December.

13 Q. And we're talking here about a
14 payment of principal and/or interest that was
15 due -- withdrawn.

16 We're talking here about a payment
17 of principal and interest that was applied
18 against NexPoint's note; correct?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall what that payment
21 consisted of.

22 Q. Is it possible that the payment you
23 have in mind related to the shared services
24 agreement?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. No.

3 Q. Are you certain that the payment --
4 that the payment that you have in mind related
5 to the promissory note that NexPoint issued in
6 favor of Highland?

7 MS. DANDENEAU: Objection to form.

8 A. Yes.

9 Q. Okay. Other than that one payment,
10 can you identify any other instance where
11 Mr. Dondero told you that a payment should not
12 have been applied against principal and
13 interest under any promissory note tendered by
14 any affiliate or Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Objection to
17 form.

18 A. Not that I recall.

19 Q. Thank you very much.

20 Do you know if Mr. Dondero approved
21 in advance of each loan made to each affiliate
22 and himself during the time that you were the
23 CFO?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 WATERHOUSE - 10-19-21

2 A. Yes, generally.

3 Q. Can you identify any loan that was
4 ever made to an affiliate or to Mr. Dondero
5 that Mr. Dondero did not approve of in advance?

6 A. Other than the ones that are in
7 dispute, I'm not aware.

8 Q. Do you believe that Mr. Dondero did
9 not approve of each of the loans that are in
10 dispute in advance of the time that the loan
11 was made?

12 MS. DANDENEAU: Objection to form.

13 A. Given what is in the dispute, you
14 know, and -- and -- and the way things might --
15 yeah, I mean...

16 Q. I am not asking about the dispute,
17 and it was probably my mistake to follow you
18 there.

19 Were you aware of every loan made by
20 Highland to each of its affiliates and
21 Mr. Dondero while you were the CFO at the time
22 each loan was made?

23 A. Was I aware of every loan, yes.

24 Q. Okay. And if you put yourself back
25 in time, do you recall that any of the loans

1 WATERHOUSE - 10-19-21

2 that were made to one of the affiliates or
3 Mr. Dondero during the time that you were the
4 CFO was made without Mr. Dondero's prior
5 knowledge and approval?

6 A. Not that I recall.

7 Q. Thank you. In fact, do you -- as
8 the CFO, would you have allowed Highland to
9 loan money to an affiliate or to Mr. Dondero
10 without obtaining Mr. Dondero's prior approval?

11 MS. DANDENEAU: Objection to form.

12 A. I can't -- there was so many times
13 over the years, I can't speak for every single
14 one, but generally, yes, I -- I spoke to him.

15 Q. You -- you never -- you never --
16 withdrawn. I will just take that.

17 Can you recall any payment that was
18 ever made against principal and interest on a
19 note that was issued in favor of Highland by an
20 affiliate or Mr. Dondero that you personally
21 did not know about in advance?

22 A. There are so many through the years,
23 I don't -- I don't -- I don't recall every
24 single one.

25 Q. Okay. Can you identify any payment

1 WATERHOUSE - 10-19-21

2 that was made against principal and interest on
3 any note tendered by any affiliate or
4 Mr. Dondero that you didn't know about in
5 advance?

6 A. I don't recall.

7 Q. Other than Mr. Dondero -- withdrawn.

8 Did anybody at Highland have the
9 authority to make a payment against principal
10 and interest due under a loan given to the
11 affiliates and Mr. Dondero without your
12 knowledge and approval?

13 MS. DANDENEAU: Objection to form.

14 A. Sorry, there was -- to make a
15 payment on an affiliate loan, what you are
16 saying would it require my knowledge and
17 approval, yes.

18 Q. Okay. I appreciate that. Thank
19 you.

20 Did anybody at Highland have the
21 authority, to the best of your knowledge, to
22 effectuate a loan to an affiliate without
23 Mr. Dondero's prior knowledge and approval?

24 MS. DANDENEAU: Objection to form.

25 A. I can't speak for all, but

1 WATERHOUSE - 10-19-21

2 generally, yes.

3 Q. Did you personally communicate with
4 Mr. Dondero to let him know each time a payment
5 of principal or interest was being made against
6 any note that was tendered by an affiliate or
7 Mr. Dondero to Highland?

8 A. I don't -- are you saying, did I let
9 Mr. Dondero know if a payment was made on any
10 affiliate or loan to Mr. Dondero? I mean,
11 not -- not every -- no.

12 Q. Let me ask it this way: Did you
13 have a practice of informing Mr. Dondero when
14 payments were made against principal and
15 interest on any note that was tendered by an
16 affiliate or Mr. Dondero?

17 MS. DEITSCH-PEREZ: Objection to
18 form.

19 MS. DANDENEAU: Objection to form.

20 A. No, I did not.

21 Q. Did Mr. Dondero ever tell you that a
22 payment of principal or interest had been made
23 against a note that was tendered by an
24 affiliate or himself that he had been unaware
25 of?

1 WATERHOUSE - 10-19-21

2 A. Not that I recall.

3 Q. Are you aware that Mr. Dondero and
4 the affiliates -- withdrawn.

5 Are you aware that Mr. Dondero
6 NexPoint, HCRE, and HCMS all contend that they
7 do not have to pay on any of the notes they
8 issued because they are subject to an oral
9 agreement between Mr. Dondero and Nancy
10 Dondero, in her capacity as the trustee of the
11 Dugaboy Investment Trust?

12 MS. DANDENEAU: Objection to form.

13 A. I didn't -- I didn't -- I didn't
14 know that it was all notes.

15 Q. Okay. Are you -- did you ever learn
16 that there was an oral agreement between Jim
17 Dondero and Nancy Dondero pertaining to any
18 notes issued by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. Yes.

22 Q. Do you have any understanding as to
23 the terms of that agreement?

24 A. Yes.

25 Q. What is your understanding of the

1 WATERHOUSE - 10-19-21

2 terms of the agreement?

3 A. That there were certain milestones
4 that had to be reached.

5 Q. Do you have any understanding of the
6 terms of the agreement between Mr. Dondero and
7 Nancy Dondero concerning any of the notes
8 issued by the affiliates or Mr. Dondero other
9 than that there have to be milestones reached?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 A. There are milestones, I found out
13 yesterday, or there was some --

14 MS. DANDENEAU: Okay. I'm just
15 going to object to the extent that you
16 learned anything in conversations with
17 counsel, please don't reveal -- that is
18 privileged, and don't reveal any privileged
19 communications.

20 THE WITNESS: Okay.

21 A. So I'm not aware of anything else.

22 Q. Do you know what the milestones
23 were?

24 MS. DANDENEAU: Objection to form.

25 A. I don't.

1 WATERHOUSE - 10-19-21

2 Q. Do you know anything about -- do you
3 know what promissory notes the agreement
4 covered?

5 A. I don't.

6 Q. Do you know if -- if Jim and Nancy
7 Dondero entered into one agreement or more than
8 one agreement?

9 MS. DEITSCH-PEREZ: Object to the
10 form.

11 A. I don't know.

12 Q. Do you know if the agreement is in
13 writing?

14 A. I don't know.

15 Q. How did you learn of the existence
16 of the agreement?

17 MS. DANDENEAU: Objection to form.
18 Again --

19 A. I don't -- I don't recall who told
20 me.

21 Q. You have no recollection of who told
22 you about this agreement between Jim and Nancy
23 Dondero?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 WATERHOUSE - 10-19-21

2 A. I don't recall.

3 Q. Do you recall how you learned of the
4 agreement?

5 Was it in a meeting? Was it in a
6 phone call? Was it in an email?

7 A. I don't recall.

8 Q. Do you recall when you learned of
9 the agreement?

10 A. Not specifically.

11 Q. Do you recall what year you learned
12 of the agreement?

13 A. In -- look, I mean, there are so
14 many notes. I may be getting -- I believe it
15 was 2020.

16 Q. All right. I'm not asking about
17 notes, sir. I'm asking about the agreement
18 that you testified you knew about between Jim
19 and Don- -- Nancy Dondero. Okay.

20 Do you understand my question now?
21 Should I ask my question again?

22 A. Yeah, sure. Go ahead.

23 Q. I'm going to use the word
24 "agreement" to refer to the agreement that
25 Mr. Dondero and Nancy Dondero entered into

1 WATERHOUSE - 10-19-21

2 where you understood that certain milestones
3 had to be reached. Okay?

4 A. Uh-huh.

5 MS. DANDENEAU: Objection.

6 MS. DEITSCH-PEREZ: Object to the
7 form.

8 MR. MORRIS: Just defining a term,
9 what is the objection.

10 MS. DEITSCH-PEREZ: The objection --

11 MR. MORRIS: I will move on. I will
12 move on.

13 MS. DEITSCH-PEREZ: John --

14 Q. Sir, are you okay with that
15 definition of agreement?

16 A. Okay.

17 Q. Okay. So you don't recall who --
18 who informed you of the existence of the
19 agreement; is that right?

20 A. I don't recall.

21 Q. You don't recall who told you the
22 terms of the agreement.

23 Do I have that right?

24 A. Correct.

25 Q. And you don't recall if you learned

1 WATERHOUSE - 10-19-21

2 about the agreement in a meeting, through an
3 email, or through a phone call.

4 Do I have that right?

5 A. I don't recall.

6 Q. Can you tell me when you learned of
7 the agreement?

8 A. I don't -- I don't -- I don't
9 remember specifically.

10 Q. Can you tell me if you learned of
11 the agreement before or after the petition
12 date?

13 A. It would have been -- it would have
14 been after.

15 Q. Can you tell me if you learned of
16 the agreement before or after January 9th,
17 2020?

18 A. It would have been after.

19 Q. Can you tell me if you learned of
20 the agreement before or after you left Highland
21 Capital Management in February of 2021?

22 A. I don't -- I don't -- I don't know.

23 Q. It is possible that you learned of
24 it while you were a Highland employee.

25 Do I have that right?

1 WATERHOUSE - 10-19-21

2 A. I don't remember the -- I mean, it
3 was sometime in 2021. I don't remember when.

4 Q. All right. So to the best of your
5 recollection, it was in 2021 but you don't
6 recall if it was before or after you ceased to
7 be a Highland employee.

8 Do I have that right?

9 A. Yeah, I mean, it was -- it was
10 likely after I was -- after I left Highland
11 because, if I put myself back into the last
12 days of -- of 2021, it was -- you know, the
13 communications with Mr. Dondero were -- were --
14 were -- there weren't as many communications
15 because of the circumstances.

16 Q. And so based on that you believe
17 that it is most likely that you learned of this
18 agreement sometime after you left Highland
19 employment?

20 A. I wouldn't use the term "most
21 likely." I don't recall specifically. I don't
22 recall.

23 Q. Do you recall ever telling Jim Seery
24 about this agreement?

25 A. No, I don't -- I didn't tell

1 WATERHOUSE - 10-19-21

2 Jim Seery.

3 Q. Did you tell anybody at DSI about
4 this agreement?

5 A. No.

6 Q. Did you tell any of Highland's
7 independent directors about this agreement?

8 A. No.

9 Q. Did you tell anybody at Pachulski
10 Stang Ziehl & Jones about this agreement?

11 A. No.

12 Q. Did you tell any employee of
13 Highland about this agreement?

14 A. No.

15 MS. DANDENEAU: Mr. Morris, it has
16 been an hour and a half. Is this a good
17 time for a break?

18 MR. MORRIS: Sure.

19 Q. Mr. Waterhouse, I will just remind
20 you that during the break please don't speak
21 with anybody about the deposition, the
22 substance of your testimony or anything else
23 concerning the deposition. Okay?

24 A. Yes.

25 MR. MORRIS: So it is 11:02. We're

1 WATERHOUSE - 10-19-21

2 at 11:02 your time. Let's come back, I
3 guess, at 15 -- at 11:15 your time.

4 VIDEOGRAPHER: We're going off the
5 record at 11:02 a.m.

6 (Recess taken 11:02 a.m. to 11:20 a.m.)

7 VIDEOGRAPHER: We are back on the
8 record at 11:20 a.m.

9 Q. Mr. Waterhouse, did you speak with
10 anybody during the break about this deposition?

11 A. No.

12 MS. DANDENEAU: Other than -- other
13 than his counsel.

14 Q. Did you speak to your counsel about
15 the substance of your deposition today?

16 A. No, I didn't bring it up.

17 Q. I didn't ask you if you brought it
18 up. I asked you if you had any conversation
19 with your lawyer about the substance of your
20 deposition.

21 MS. DANDENEAU: Yes, he did.

22 Q. Can you tell me what the -- you
23 discussed?

24 MS. DANDENEAU: No, I object to
25 that. He's not going to answer. That is a

1 WATERHOUSE - 10-19-21

2 privileged conversation.

3 MR. MORRIS: So I just want to make
4 sure that I understand. During the break
5 you spoke with your client about the
6 substance of this deposition; is that
7 right?

8 MS. DANDENEAU: Yes, John.

9 MR. MORRIS: And you refuse -- you
10 refuse to let your client tell me what was
11 discussed; is that right?

12 MS. DANDENEAU: That's correct.

13 MR. MORRIS: You know, I had given
14 the instruction prior to the break not to
15 speak with counsel. I would have
16 appreciated --

17 MS. DANDENEAU: No, you didn't --
18 actually, that is not true, Mr. Morris.
19 You said not to speak with anyone. We
20 never have interpreted that to mean
21 conversations with counsel. That's never
22 been -- I have never, ever heard that
23 instruction.

24 MR. MORRIS: Okay. We will -- we
25 will -- we will deal with it when and if we

1 WATERHOUSE - 10-19-21

2 have to.

3 Q. Mr. Waterhouse, after learning about
4 the agreement, did you ask anybody if the
5 agreement was reflected in a writing?

6 MS. DANDENEAU: Objection to form.

7 A. No.

8 Q. Did you ask anybody if the terms of
9 the agreement were memorialized anywhere?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: What is the --

12 A. No.

13 MS. DANDENEAU: Well, because you
14 keep talking about this agreement and I --
15 I -- I think, Mr. Morris, that is really
16 not clear what you mean by "the agreement."
17 And maybe you can just go back and restate
18 what that is.

19 MR. MORRIS: Okay. Your client has
20 agreed with me twice on the definition, but
21 I will try one more time.

22 Q. Mr. Waterhouse, do you understand
23 that when I use the term "agreement," I'm
24 referring to the agreement between Jim and
25 Nancy Dondero concerning certain promissory

1 WATERHOUSE - 10-19-21

2 notes where you learned that one of the terms
3 of the agreement was milestones reached?

4 A. Okay.

5 Q. And did you understand that that was
6 the -- the agreement that we were referring to
7 every time we used the word "agreement" in this
8 deposition?

9 A. I don't know anything about this
10 agreement. So, look, I do -- it -- I don't
11 know whether --

12 Q. Let's -- let's try this again.

13 A. Yeah. Look, I don't know what this
14 agreement relates.

15 MS. DEITSCH-PEREZ: John, John --

16 Q. Let me try --

17 MS. DEITSCH-PEREZ: John, please let
18 the witness finish.

19 MR. MORRIS: Please stop. Please
20 stop. Please stop talking.

21 MS. DEITSCH-PEREZ: No, you stop.
22 Let the witness --

23 MR. MORRIS: Stop talking.

24 MS. DEITSCH-PEREZ: -- finish -- you
25 interrupted him.

1 WATERHOUSE - 10-19-21

2 MR. MORRIS: You know what, you
3 guys, this is really wrong. It is really,
4 really wrong. Okay?

5 I had the witness agree not once,
6 but twice to the definition of agreement.
7 Okay? I'm going to try and do it a third
8 time.

9 MS. DANDENEAU: No, but, please,
10 John, really --

11 MR. MORRIS: No, please stop
12 talking. Please. It is my deposition.
13 Object to questions.

14 MS. DANDENEAU: No, but also you
15 instructed him that -- that if you were
16 going -- if you were interrupting him, that
17 he should remind you that you're
18 interrupting him and -- and --

19 MR. MORRIS: Let him do that. Let
20 him do that.

21 MS. DANDENEAU: Okay. Well, you --

22 MR. MORRIS: Please stop talking.

23 A. Okay. I don't know any of the
24 details of these agreements. I don't know
25 anything about them. I heard -- someone -- I

1 WATERHOUSE - 10-19-21

2 don't know who, I don't know when, as you
3 asked, sometime in '21, someone told me about
4 this -- or I don't honestly know -- I don't
5 even recall exactly how I was made aware of
6 this, but I was. I don't know -- I don't know
7 any of these details, and I'm getting -- again,
8 there is, you know, I -- I -- I had a passing
9 conversation with -- with Jim at some point
10 on -- on some -- on the executive comp, and I'm
11 getting confused of what is what, because
12 again, I don't know any of these details.

13 Q. Okay. Let me try again,
14 Mr. Waterhouse, and I apologize.

15 Are you aware of any agreement
16 between Jim Dondero and Nancy Dondero
17 concerning any promissory note that was given
18 to Highland by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. I've heard of an agreement. That
22 is -- that is -- I mean, if you are using aware
23 as heard, sure.

24 Q. And you understand that one of the
25 terms of the agreement is that it was based on

1 WATERHOUSE - 10-19-21

2 milestones that had to be reached; is that
3 right?

4 MS. DANDENEAU: Objection to form.

5 A. That was one of the words that was
6 used when I heard about it, yes.

7 Q. And when you heard about this
8 agreement that had a term in it concerning
9 milestones reached, did you ask the person who
10 was telling you about the agreement whether or
11 not it was in writing?

12 A. I did not.

13 Q. Did you ask any questions at all?

14 MS. DANDENEAU: Objection to form.

15 A. Not that I recall.

16 Q. But do you understand that going
17 forward, we're going to refer to the agreement
18 as the agreement that you just described that
19 you were --

20 MS. DANDENEAU: Object to the form.

21 A. Yes.

22 Q. Okay. You don't have any personal
23 knowledge concerning the terms of the
24 agreement; correct?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 Q. You can answer.

4 A. I don't -- I heard about the
5 agreement. I don't know anything -- I heard
6 there was an agreement. That is -- again, as I
7 testified before -- I said before, heard about
8 it, don't know the details. I believe it was
9 sometime this year.

10 Q. Do you have any personal knowledge
11 about the terms of the agreement, sir?

12 MS. DANDENEAU: Objection to form.

13 A. Other than what I have previously
14 discussed, I don't -- I don't know.

15 Q. Did -- did Mr. Dondero tell you
16 about the existence of the agreement?

17 A. I don't recall.

18 Q. Do you recall the source of your
19 information when you learned about the
20 agreement?

21 A. No, I don't -- I don't recall. I
22 don't remember. I just -- I heard about it
23 generally. I don't remember -- I don't
24 remember who, how, if, how. I don't remember.

25 Q. You know, Mr. Waterhouse, I just

1 WATERHOUSE - 10-19-21

2 want to be clear that I never would have asked
3 you to appear at this deposition if your name
4 hadn't been included in responses to discovery
5 as to somebody with knowledge about the -- who
6 was told about the existence of the agreement.

7 That is what prompted me do this,
8 and I really do feel compelled to tell you that
9 I otherwise would never have called you as a
10 witness. So I regret that you're being put
11 through this today. I had no intention of
12 burdening you or taking your time, but that is
13 the reason that we issued the subpoena is
14 because certain of the defendants identified
15 you as somebody --

16 MS. DEITSCH-PEREZ: Mr. Morris, you
17 are here to ask questions, not to have --

18 MR. MORRIS: I feel badly for the
19 guy. I really do.

20 MS. DEITSCH-PEREZ: I'm sure you do.

21 MR. MORRIS: I do. Stop.

22 MS. DEITSCH-PEREZ: You stop.

23 MR. MORRIS: I'm allowed.

24 MS. DEITSCH-PEREZ: No, you're not
25 allowed to have a chat with the witness.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Well, I hope that you
3 appreciate what I'm saying here,
4 Mr. Waterhouse.

5 MS. DANDENEAU: All right. Let's go
6 ahead and ask questions, and again, you're
7 entitled to probe his -- his knowledge
8 of -- whatever knowledge he has about
9 this -- this agreement and --

10 MR. MORRIS: That is what I'm doing.

11 MS. DANDENEAU: -- he will answer
12 the questions to the best that he can.

13 MR. MORRIS: That is what I'm doing.

14 Q. Mr. Waterhouse, I take it you do not
15 know which promissory notes issued by which
16 affiliates or Mr. Dondero are the subject of
17 this agreement; do I have that right?

18 A. Yes, I don't -- I don't know.

19 Q. Do you know of any way to determine
20 which promissory notes issued by the affiliates
21 and Mr. Dondero are the subject of this
22 agreement other than asking Jim or Nancy
23 Dondero?

24 MS. DANDENEAU: Objection to form.

25 A. I don't know.

1 WATERHOUSE - 10-19-21

2 Q. Did you ever make --

3 A. I don't know anything about these
4 agreements.

5 Q. Did you ever make any effort to
6 determine which promissory notes are subject to
7 this agreement?

8 A. No.

9 Q. Did you ever ask anybody which
10 promissory notes are subject to this agreement?

11 A. No.

12 Q. Do you know if there is a list
13 anywhere of the promissory notes that are
14 subject to this agreement?

15 A. I'm not aware.

16 Q. Have you ever seen the terms of the
17 agreement written down anywhere?

18 A. No.

19 Q. Have you ever asked anybody whether
20 the terms of the agreement were written down
21 anywhere?

22 A. I have not.

23 Q. Did learning about the agreement
24 cause you to do anything in response?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. No.

3 Q. Did anybody ever describe to you the
4 nature of the milestones that you referred to
5 earlier?

6 A. No, I don't -- I don't have any
7 details of this.

8 Q. That is fine.

9 PricewaterhouseCoopers served as
10 Highland's outside auditors prior to the
11 petition date; correct?

12 A. Yes.

13 Q. You refer to PricewaterhouseCoopers
14 as PwC?

15 A. Yes.

16 Q. PricewaterhouseCoopers audited
17 Highland's financial statements on an annual
18 basis; correct?

19 A. During my -- during my time as -- as
20 CFO, yes, PricewaterhouseCoopers was the
21 auditor.

22 Q. Do you know why Highland had its
23 annual financial statements audited each year?

24 A. Generally.

25 Q. Tell me your general understanding

1 WATERHOUSE - 10-19-21

2 as to the reason why Highland had its annual
3 financial statements audited each year.

4 A. From -- from time to time, they were
5 used -- or asked for, as part of diligence or
6 transactions or -- or things of that nature.

7 Q. And were they given to third parties
8 for purposes of diligence or transactions from
9 time to time?

10 A. As far as I'm aware, yes.

11 Q. And was it your understanding as the
12 CFO that the third parties who received the
13 financial statements in diligence or
14 transactions was going to rely on those?

15 MS. DANDENEAU: Objection to form.

16 A. I don't know -- I don't know gen --
17 I don't know specifically what they were going
18 to rely on. You know, we would get requests
19 for audited financial statements. I don't know
20 what they were relying on.

21 Q. And --

22 A. You would have to ask them.

23 Q. Did you personally play a role in
24 PwC's annual audit and the conduct of the
25 audit?

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: Objection to form.

3 A. During my tenure as CFO, I played a
4 very minimal role.

5 Q. What was the minimal role that you
6 played?

7 A. You know, again, it was -- it was to
8 check in with the team, to make sure that, you
9 know, audit -- the deadlines were being hit,
10 information was being presented to the auditors
11 in a -- in a timely fashion, but, you know,
12 other than that, it was a very capable team
13 that are still current employees of Highland
14 and, you know, they -- they conducted 99
15 percent of -- look, I don't want to give
16 percentages. I mean, this is -- but I -- I --
17 I played a minimal role towards the end.

18 Before during my earlier years as
19 CFO, I did more, and then as time went on, I
20 did less in it.

21 Q. Okay. Was there a person at
22 Highland who was responsible for overseeing
23 Highland's participation in PwC's audit during
24 the time that you were the CFO?

25 A. Yeah. I mean, there was -- there

1 WATERHOUSE - 10-19-21

2 was a -- there was a point -- it varies. It
3 varies by year, in function, in time and, you
4 know, depending on the request, but yes, I
5 mean, there is -- there is -- there is
6 generally a point person of communication.

7 Q. And who was the point person from
8 2016 until the time you left Highland?

9 A. I don't -- I don't know
10 specifically, but it would have been, you
11 know -- you know, someone on the corporate
12 accounting team.

13 Q. And was there a head of the
14 corporate accounting team?

15 A. Yes, so -- yes.

16 Q. Who was the head of corporate
17 accounting for the five years prior to the time
18 you left Highland?

19 A. I don't -- if you're asking from
20 2016 on, I don't -- it was Dave Klos, but,
21 again, there was -- there was changes to the
22 team and the reporting structure. I don't
23 remember exactly when that happened during --
24 you know, over the last -- since 2016.

25 Q. Did the folks who participated and

1 WATERHOUSE - 10-19-21

2 ran the audit all report to you, directly or
3 indirectly?

4 A. Yes.

5 Q. And did you have any responsibility
6 for making sure that the audit report was
7 accurate before it was finalized?

8 A. Yeah. I mean, you know, that --
9 that is -- my responsibility to the auditors
10 was -- again, is -- and the CFO is to -- we are
11 providing accurate financial statements; right?

12 And -- and -- and as part of any
13 audit, we disclose all relevant information as
14 part of any audit.

15 Q. Okay. And as the CFO, did you take
16 steps to make sure that the audit report was
17 accurate?

18 A. I mean, I would say in a general
19 sense, yes. But, again, I mean, I had a
20 very -- I had a very capable and competent
21 team. I wasn't managing them.

22 You know, part of what I do is I let
23 the team -- I want managers to grow. I want
24 managers to have rope. And that is -- you
25 know, I'm not a stand-behind-you type of guy.

1 WATERHOUSE - 10-19-21

2 If you -- if you talk to my team members, I'm
3 not micromanaging people. I want people to
4 learn and grow in their function so they can go
5 on and do bigger and better things with their
6 careers.

7 And so, yes, generally I was
8 responsible for it, but I wanted the team to
9 learn and grow and be responsible for the bulk
10 of the audit.

11 Q. Did you personally review each audit
12 report before it was finalized to satisfy
13 yourself that it was accurate?

14 A. I don't -- I don't recall, you know,
15 for every single -- we're talking 2016, there
16 would have been three years, 2016 to '17, '18.
17 I don't -- we're -- we're going back
18 five years-plus. I don't -- you know, I don't
19 recall.

20 Q. Did you have a practice that you
21 employed to make sure that you were satisfied
22 that Highland's audit reports were true and
23 accurate to the best of your knowledge?

24 A. I mean, our -- the practice was set
25 up with our -- the -- the practice to put

1 WATERHOUSE - 10-19-21

2 together accurate audited or accurate financial
3 statements is to your control environment.

4 So, you know, the -- so the practice
5 was to maintain a stable control environment
6 which then the output is -- is accurate
7 financial statements.

8 So -- so, you know, if I was
9 comfortable that the control environment was
10 operating, then, you know, that would dictate
11 how I would -- you know, what I might or might
12 not do in a given year.

13 Q. Okay. Do you recall ever being
14 uncomfortable with the control environment
15 during the period that you served as CFO?

16 A. Yeah. I mean, look, yes, there are
17 times -- you know, nothing is perfect. So
18 there were -- there were times when, yes, you
19 know -- there are times I learned I was
20 uncomfortable with the control environment, and
21 that is part of the management of the process
22 and having, you know -- and -- and working
23 through whatever obstacles present themselves.

24 Q. Okay. Were you ever uncomfortable
25 with the control process as it related to

1 WATERHOUSE - 10-19-21

2 reporting and disclosures of loans to
3 affiliates and Mr. Dondero?

4 MS. DANDENEAU: Objection to form.

5 A. I don't -- I don't recall --

6 Q. So you don't recall --

7 A. -- the --

8 MS. DANDENEAU: Mr. Morris --

9 A. I don't recall being uncomfortable.

10 But, again, we're going back several years. I
11 don't -- you know, the practice in an audit is
12 to disclose all information to the auditors.

13 And I don't -- I don't recall.

14 Q. As part of the process of the audit,
15 did you sign what is sometimes referred to as a
16 management representation letter?

17 A. Yes.

18 MR. MORRIS: Can we put up on the
19 screen a document that we have premarked as
20 Exhibit 33.

21 (Exhibit 33 marked.)

22 MS. DANDENEAU: Mr. Morris, that is
23 not in the binder; correct?

24 MR. MORRIS: Correct.

25 Q. So you will see, Mr. Waterhouse,

1 WATERHOUSE - 10-19-21

2 this is a letter dated June 3rd. And if we
3 could go to the signature page.

4 And do you see that you and
5 Mr. Dondero signed this document?

6 A. Yes.

7 Q. That is your signature; right?

8 A. Yes.

9 MR. MORRIS: Okay. Can you go back
10 to the top.

11 MS. DANDENEAU: Mr. Morris, can you
12 have somebody post this in the chat so that
13 we have can have a copy of this, please.

14 MR. MORRIS: Yeah, sure. Asia, can
15 you do that, please.

16 Q. Okay. Do you see at the bottom of
17 the second paragraph there is a reference to
18 materiality?

19 A. Yes.

20 Q. Okay. It says, Materiality used for
21 purposes of these representations is
22 \$1.7 million.

23 Do you see that?

24 A. I do.

25 Q. And did PwC set that level of

1 WATERHOUSE - 10-19-21

2 materiality?

3 A. Yes.

4 Q. And for purposes of the audit, did
5 PwC set the level of materiality each year?

6 A. Yes.

7 Q. Did that number change over time?

8 A. I'm not aware of what materiality is
9 every single year, so -- but, you know, this
10 number would likely fluctuate.

11 Q. Okay. I'm going to go back to a
12 question I asked you earlier today. And that
13 is in connection -- this letter is issued in
14 connection with the audit for the period ending
15 12/31/2018; correct?

16 A. Yes.

17 Q. Okay. And is it fair to say that if
18 any -- actually, withdrawn. I'm going to take
19 it outside of this.

20 If Highland ever forgave the loan to
21 any affiliate or any of its officers or
22 employees, in whole or in part, to the best of
23 your knowledge, would that forgiveness have
24 been disclosed in the audited financial
25 statements if it exceeded the level of

1 WATERHOUSE - 10-19-21

2 materiality that PwC established?

3 MS. DANDENEAU: Objection to form.

4 A. So, again, during my tenure as CFO,
5 and -- Highland -- it was -- it is required to
6 disclose any affiliate loans that are in excess
7 of materiality.

8 Now, the forgiveness of those loans
9 may or may not -- I mean, since materiality
10 fluctuates every year, a -- you know, if a loan
11 was forgiven, it may or may not, you know --
12 and, look, I would want to consult the guidance
13 around this.

14 It is not something we do -- you
15 know, it is not -- you know, GAAP can be and
16 disclosures can be very specialized so, again,
17 we want to consult the guidance. But we would
18 see if and what would need to be disclosed if
19 it were deemed immaterial.

20 Q. Did you and Mr. Dondero sign
21 management representation letters of this type
22 in each year in which you served as Highland's
23 CFO?

24 A. I -- I -- I will speak for myself.
25 I signed them. There may have been others that

1 WATERHOUSE - 10-19-21

2 signed as well. I don't -- I don't recall.

3 Q. But to the best of your knowledge,
4 you, personally, signed a management
5 representation letter in connection with
6 Highland's audit each year that you served as
7 the CFO; correct?

8 A. I would say generally speaking,
9 Mr. Morris. I don't recall for every single
10 year, you know, generally, but I would want to
11 refer to all the rep letters and see who signed
12 them.

13 Q. Do you recall Highland having its
14 financial statements audited in any year during
15 the period that you were a CFO where you didn't
16 sign the management representation letter?

17 A. I don't recall. But, John, we're
18 going back five, six, seven, eight, nine,
19 decade. I don't -- I don't remember.

20 Q. I don't want to go back that many
21 decades, but I'm just asking you if you recall
22 that there was you didn't sign it?

23 A. I -- I -- I don't, but my memory
24 is -- again, I -- I -- I can't tell you what I
25 did in 2012. I mean, I think generally, yes,

1 WATERHOUSE - 10-19-21

2 but I don't -- I don't know for sure, and I
3 would want to rely on the document.

4 Q. Let me ask the question a little bit
5 differently then.

6 Do you have any reason to believe
7 that Highland had its annual financial audit
8 and you did not sign a management
9 representation letter in connection with that
10 audit?

11 MS. DANDENEAU: Objection to form.

12 A. I don't believe it would, but,
13 again, I would want to -- I don't recall and I
14 would want to confirm it to -- to make, you
15 know, an affirmative -- to give an affirmative
16 answer.

17 Q. Do you know whether PwC required
18 management to sign management representation
19 letters?

20 MS. DANDENEAU: Objection to form.

21 A. Yes. I mean, it -- management
22 representation letters are signed by
23 management.

24 Q. Okay. And do you know -- do you
25 have any understanding as to why PwC requires

1 WATERHOUSE - 10-19-21

2 management to sign management representation
3 letters?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. I don't know why PwC's -- what PwC's
7 specific practice is. I know generally what
8 management representation letters are.

9 Q. Okay. Do you personally -- I'm not
10 asking about PwC. I'm asking for you -- I'm
11 asking about you, do you have an understanding
12 as to why the auditor asks for management
13 representation letters?

14 A. Okay. So you're asking me in my
15 personal capacity, yes, I have a general
16 understanding of why.

17 Q. Can you give me the general
18 understanding that you have as to why
19 management representation letters are required?

20 A. They are -- they are required to --
21 they are -- they are one of the items required
22 in an audit to help verify completeness.

23 Q. Do you have any -- any other
24 understanding as to why management
25 representation letters are required?

1 WATERHOUSE - 10-19-21

2 A. That is -- that is -- other than
3 what I said, it is -- it is -- it is required
4 so -- to ensure that the -- you know, there
5 is -- there is completeness in what is being
6 audited.

7 Q. Did you -- did you have a practice
8 whereby you and Mr. Dondero conferred about the
9 management representation letters before you
10 signed them?

11 A. No.

12 Q. Did you have a practice --
13 withdrawn.

14 Do you see just the next sentence
15 after the materiality, there is a sentence that
16 states: We confirm, to the best of our
17 knowledge and belief, as of June 3rd, 2019, the
18 date of your report, the following
19 representations made to you during your audit.

20 Do you see that sentence?

21 A. Yes.

22 Q. Okay. Did you understand when you
23 signed this letter that you were confirming the
24 representations that followed?

25 A. When I signed this management

1 WATERHOUSE - 10-19-21

2 letter -- representation letter, yes.

3 Q. Okay. Did you discuss this letter
4 with Mr. Dondero before you signed it?

5 A. I don't recall.

6 Q. Do you recall if Mr. Dondero asked
7 you any questions before he signed the letter?

8 A. I don't recall.

9 Q. Do you recall if you asked
10 Mr. Dondero any questions before you signed
11 this letter?

12 A. I don't recall.

13 Q. Is it fair to say that Mr. Dondero
14 did not disclose to you the existence of the
15 agreement that we have -- as we've defined that
16 term prior to the time you signed this letter?

17 MS. DANDENEAU: Objection to form.

18 A. I don't think I understand the
19 question. So, again, you are saying, did
20 Mr. Dondero not disclose to me the existence of
21 this letter?

22 Q. No, I apologize.

23 Did Mr. Dondero disclose to you the
24 existence of the agreement prior to the time
25 you signed this letter on June 3rd, 2019?

1 WATERHOUSE - 10-19-21

2 A. The agreement -- the agreement that
3 we talked about earlier?

4 Q. Correct.

5 A. Look, as I said earlier, the first
6 time I heard of this agreement was sometime
7 this year.

8 Q. Okay. Can we turn -- let's just
9 look at a couple of items on the list. If we
10 can go to page 33416. Do you see in Number 35
11 it talks about the proper recording or
12 disclosure in the financial statements of ND
13 relationships and transactions with related
14 parties.

15 Do you see that?

16 A. I do.

17 Q. As the CFO, do you have any
18 understanding as to whether Dugaboy is a
19 related party?

20 A. I don't recall.

21 Q. Do you know whether any of the
22 affiliates are related parties?

23 A. If -- if it was NexPoint, HCMFA,
24 HCMS, HCRE, yeah, if -- if that is the
25 affiliate definition, and there. In ASC 850 --

1 WATERHOUSE - 10-19-21

2 again, I mean, I haven't looked at ASC 850 in
3 quite some time, but, you know, if -- if there
4 is a control language, you know, ASC 850, would
5 that -- that section in GAAP would -- would
6 pick up and define what are related parties.

7 So, you know, like I said, if -- one
8 of the four entities I just described, if -- if
9 they are in that control definition of ASC 850,
10 they would be picked up in 35D.

11 Q. Do you -- do you have any reason to
12 believe that they would be picked up in that
13 definition, based on your knowledge and
14 experience?

15 A. I -- I believe that entities
16 controlled under GAAP are -- are affiliates.

17 Q. Okay. Would Mr. Dondero also
18 qualify as a related party for purposes of
19 Section 35D, to the best of your knowledge?

20 A. Yeah, I don't -- I don't know. I
21 would think -- I would have to read the code
22 section to see if someone personally -- is it
23 talking about related parties. So, look, if
24 your own in control, yeah, I mean, I would have
25 to read the section.

1 WATERHOUSE - 10-19-21

2 Q. To the best of your knowledge, was
3 the existence of the agreement ever disclosed
4 to PwC?

5 A. I'm not -- I'm not aware.

6 Q. Do you recall if the agreement was
7 ever disclosed in Highland's audited financial
8 statements?

9 A. I don't -- I don't remember if it
10 was in every Highland's audited financial
11 statements during my tenure. We would have to
12 read the financial statements to see what was
13 disclosed, but I'm not -- I mean, as I sit here
14 today, I'm not aware.

15 Q. That is all I'm asking for.

16 A. I'm not aware.

17 Q. Can we go to the next page, please,
18 and look at 36. 36 says, we have disclosed to
19 you the identity of the partnership's related
20 party relationships and all the related party
21 relationships and transactions of which we are
22 aware.

23 Do you see that?

24 A. Yes.

25 Q. To the best of your knowledge, as of

1 WATERHOUSE - 10-19-21

2 June 3rd, 2019, did Highland disclose to PwC
3 the identity of the partnership's related
4 parties and all the related party relationships
5 and transactions of which it was aware?

6 A. I mean, I can speak for myself as
7 signer of this representation letter. I
8 disclosed what -- what, you know, what --
9 what -- what I knew. Sorry, look, yes, so I --
10 I disclosed what I knew.

11 Q. Okay. Can we go to page 419. Do
12 you see at the end there is a reference to
13 events that occurred since the end of the
14 fiscal year and the date of the letter?

15 A. Yes.

16 Q. And were you aware of that -- of
17 that provision of the management representation
18 letter before you signed the document?

19 A. Yes.

20 Q. Do you have an understanding as to
21 why PwC asked for that confirmation of that
22 particular part of the management
23 representation letter?

24 A. It is -- it is -- it is just -- it
25 is a typical audit request.

1 WATERHOUSE - 10-19-21

2 Q. And do you understand -- do you have
3 an understanding that PwC wanted to know that
4 as of the date of the audit whether any
5 material changes had occurred since the end of
6 the fiscal year, using the definition of
7 materiality that is in this particular
8 management representation letter?

9 A. It -- it is -- it is -- it is a --
10 it is as described. It is just a poorly worded
11 question, so it is hard for me to say yes.

12 Q. If I asked you this, I apologize,
13 but did you ever learn when the agreement was
14 entered into?

15 A. I don't -- I don't -- like I said
16 before, I don't know or have any details of the
17 agreement.

18 Q. Okay. Did you ever ask anybody when
19 the agreement was entered into?

20 A. I did not.

21 Q. Let's look at the audited financial
22 statements. We will put up on the screen a
23 document that has been premarked as Exhibit 34.

24 (Exhibit 34 marked.)

25 MS. DANDENEAU: And again, if Ms. La

1 WATERHOUSE - 10-19-21

2 Canty could please put that in the chat
3 room, that would be great.

4 MR. MORRIS: I will assure you we
5 will put every document in the chat room.

6 Q. Now, I'm just going to ask you
7 questions that are related to the provisions of
8 this report that concern the affiliate loans,
9 but again, Mr. Waterhouse, if there is any part
10 of the document that you need to see or that
11 you think you might need to see in order to
12 refresh your recollection to answer any of my
13 questions, will you let me know that?

14 A. Yes.

15 Q. Because this is a pretty lengthy
16 document, but do you see that the cover page
17 here is the Highland consolidated financial
18 statements for the period ending December 31st,
19 2018?

20 A. Yes.

21 Q. If we can go to -- I think it is the
22 next one, looking for PwC's signature line.

23 MS. CANTY: I'm sorry, John, did you
24 say something?

25 MR. MORRIS: Yes, can we turn the

1 WATERHOUSE - 10-19-21

2 page. I think it is 215. Yes, stop right
3 there, just above -- I'm sorry, I want to
4 see just the date of the report.

5 Q. Okay. Do you see at the bottom of
6 that page there, Mr. Waterhouse,
7 PricewaterhouseCoopers has signed this audit
8 report?

9 A. Yes, I see their signature.

10 Q. Okay. And it is the dated same day
11 as your management representation letter; is
12 that right?

13 A. It is -- yes, it is the same day.

14 Q. Was that the practice to sign the
15 management representation letter on the same
16 day that the audit report was signed?

17 A. Yes, that is typical in every audit.

18 Q. Can we just scroll down to the
19 balance sheet on the next page.

20 Do you see that there is a line
21 there that says, Notes and Other Amounts Due
22 from Affiliates?

23 A. Yes.

24 Q. Does that line, to the best of your
25 knowledge, include the amounts that were due

1 WATERHOUSE - 10-19-21

2 under the affiliate under the notes signed by
3 the affiliates and Mr. Dondero?

4 MR. RUKAVINA: Objection to the
5 extent that calls for a legal conclusion.

6 A. I mean, I would want to see the
7 detail and the build to this \$173,398,000, but,
8 yes, I mean, if -- if -- given what we
9 discussed before, you know, it -- it should
10 capture that.

11 Q. And -- and while you were the CFO of
12 Highland, were all notes held by Highland that
13 were issued by an affiliate or Mr. Dondero
14 carried as assets on Highland's balance sheets?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Object to form.

17 A. I don't -- I don't know how else
18 they would be carried.

19 Q. Okay. Can you think of any -- are
20 you aware of any promissory note issued by an
21 affiliate or Mr. Dondero that was not carried
22 on Highland's audited financial balance sheets?

23 A. I'm -- I'm -- I'm not aware.

24 Q. Okay. Are you aware of any category
25 of asset on Highland's balance sheet in which

1 WATERHOUSE - 10-19-21

2 any of the promissory notes issued by an
3 affiliate or Mr. Dondero would have been
4 included?

5 MS. DANDENEAU: Objection to form.

6 A. Sorry, am I aware of any asset of an
7 affiliate being included --

8 Q. That -- let me -- let me try again.

9 Do you see there is a number of
10 different assets that are described on this
11 balance sheet?

12 A. Yes.

13 Q. One of the assets that is described
14 is Notes and Other Amounts Due from Affiliates;
15 right?

16 A. Yes.

17 Q. And it is reasonable to conclude
18 that the notes from the affiliates and
19 Mr. Dondero are included in that line item;
20 right?

21 A. Yes, based on this description.
22 Again, I would want to see a build of this to
23 100 percent confirm, but based on the
24 description, the asset description, it is -- it
25 is likely.

1 WATERHOUSE - 10-19-21

2 Now, does that mean absolute? I
3 don't know.

4 Q. Do you have any reason to believe
5 that the promissory notes would have been
6 carried on the balance sheet in a category
7 other than Notes and Other Amounts Due from
8 Affiliates?

9 A. If they were deemed -- no. If they
10 were deemed an affiliate, you know, under GAAP,
11 they should be carried in that line.
12 Otherwise, it would go into another line.

13 Q. Okay. And do you see the total
14 asset base as of December 31st, 2018, was
15 approximately \$1.04 billion?

16 A. Yes.

17 Q. Is my math correct that the Notes
18 and Other Amounts Due from Affiliates
19 constituted approximately 17 percent of
20 Highland's assets as of the end of 2018?

21 A. Well, so how are you defining
22 Highland?

23 Q. Highland Capital Management, L.P.,
24 the entity that this audit is subject to -- or
25 the subject of.

1 WATERHOUSE - 10-19-21

2 A. On a consolidated or unconsolidated
3 basis?

4 Q. I'm looking at the balance sheet.
5 It is a consolidated balance sheet. Okay?

6 Does the Notes and Other Amounts Due
7 from Affiliates constitute approximately
8 17 percent of the total assets of Highland
9 Capital Management, L.P., on a consolidated
10 basis?

11 MS. DANDENEAU: Objection to form.

12 A. I don't have a calculator in front
13 of me but I will take your math, if you are
14 taking the 173 divided by the billion.

15 Q. Okay.

16 A. If that is accurate, yes. But,
17 again, on a consolidated basis.

18 Q. And on an unconsolidated basis the
19 percentage would be higher; correct?

20 A. I -- no. I don't know.

21 Q. Well, okay. That is fair.

22 MR. MORRIS: Can we turn to
23 page 241, please.

24 Q. Do you see that this is a section of
25 the audit report that is entitled Notes and

1 WATERHOUSE - 10-19-21

2 Other Amounts Due from Affiliates?

3 A. Sorry, I can't see the -- the --

4 Q. It is at the top.

5 A. Notes and Other Amounts Due from
6 Affiliates, yes, I see that. I don't -- I
7 don't have a page number, but I'm on a page
8 that says at the top: Notes and Other Amounts
9 Due from Affiliates.

10 Q. Okay. And that is the same title of
11 the line item on the balance sheet that we just
12 looked at; right? Notes and Other Amounts Due
13 from Affiliates?

14 A. Yes.

15 Q. And is it your understanding, based
16 on your experience and knowledge as the CFO,
17 that this is the section of the narrative that
18 ties into the line item that we just looked at?

19 A. Yes.

20 Q. And is this section of the audit
21 report intended to describe and disclose all of
22 the material facts concerning the Notes and
23 Other Amounts Due from Affiliates?

24 MS. DANDENEAU: Objection, form.

25 A. This -- these notes -- these notes

1 WATERHOUSE - 10-19-21

2 of the financial statements are -- the purpose
3 is to disclose any material items in relation
4 to that balance sheet line item.

5 Q. Okay. And all of the information,
6 to the best of your knowledge, that is set
7 forth in this section of the audit report was
8 provided by Highland; correct?

9 A. Yes, it would have been provided by
10 the corporate accounting team.

11 Q. Okay. And the corporate accounting
12 team, did that team report to you in the
13 organizational structure?

14 A. Yes.

15 Q. And did you have any concerns about
16 the controls that were in place to make sure
17 that the information provided with respect to
18 Notes and Other Amounts Due from Affiliates was
19 accurate and complete?

20 MS. DANDENEAU: Objection to form.

21 A. Not that I recall.

22 Q. Okay. Do you recall ever being
23 concerned that any portion of the Notes and
24 Other Amounts Due from Affiliates in any audit
25 report was inaccurate, incomplete, or not

1 WATERHOUSE - 10-19-21

2 reliable?

3 A. I didn't -- I had concerns about,
4 you know, like I talked about before, of there
5 were -- there were potentially issues in the
6 control environment. But as far as it relates
7 to the audited financial statements, any -- the
8 team would work with the auditors to disclose
9 all -- all notes in Highland's possession.

10 And any -- any notes that were
11 deemed material by the auditor, right, these
12 were disclosed in these -- in this section, you
13 know, in -- in the notes to the consolidated
14 financial statements as you presented.

15 Q. Do you recall ever having a
16 conversation with anybody at any time
17 concerning the accuracy of the section of audit
18 reports that relates to Notes and Other Amounts
19 Due from Affiliates?

20 MS. DANDENEAU: Objection to form.

21 A. You know, as -- as -- I didn't have
22 direct conversations with
23 PricewaterhouseCoopers as I had, you know --
24 I -- I had the team that managed this.

25 Again, I wasn't anywhere chose to

1 WATERHOUSE - 10-19-21

2 being the point person of this audit. And I
3 can't recall, you know, when -- you know, I
4 don't even know if I was ever the point person
5 during my tenure as CFO.

6 I don't know if PwC had any concerns
7 when they were performing those audit
8 procedures. They may have and they may have --
9 and it may not have been communicated to me. I
10 don't know.

11 MR. MORRIS: All right. I move to
12 strike.

13 Q. And I'm going to ask you to listen
14 carefully to my question.

15 Did you -- do you recall ever having
16 a conversation with anybody at any time
17 concerning the accuracy of the reporting
18 provided in the audited financial statement on
19 the topic of Notes and Other Amounts Due?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall for this, but that
22 doesn't mean that it didn't exist.

23 Q. Okay. But you have no reason to
24 believe, as you sit here right now, that you
25 ever discussed with anybody concerns over the

1 WATERHOUSE - 10-19-21

2 accuracy of the section of the audit reports
3 called Notes and Other Amounts Due from
4 Affiliates; correct?

5 MS. DANDENEAU: Object to the form.

6 MS. DEITSCH-PEREZ: Objection to
7 form.

8 A. I don't recall having any
9 conversations. But, again, I mean, this is --
10 this is two years ago.

11 Q. I'm just asking for your
12 recollection, sir.

13 A. Yes.

14 Q. If you don't recall, this will --

15 A. Yeah.

16 Q. (Overspeak) -- if you don't
17 recall --

18 A. Yeah, I don't -- I don't recall.

19 Q. Do you know who was responsible for
20 drafting the audit report?

21 A. Are you asking the actual Highland
22 employee responsible? I mean, it was
23 Highland's responsibility, so, I mean, that
24 is --

25 Q. Right.

1 WATERHOUSE - 10-19-21

2 A. -- Highland's responsibility.

3 Highland's responsibility.

4 Q. Who, at Highland, was responsible
5 for drafting this section of the audit report?

6 A. I -- I don't know the answer to
7 that. Again, there was a team who worked on
8 this. And I don't know, you know, whether it
9 was the staff or the manager.

10 Again, this is where I let the teams
11 manage. And, you know, there may be a
12 corporate accountant who worked on this. I
13 just -- you know, I wasn't part of that process
14 to give that person experience. I don't know.

15 Q. Do you recall having any
16 communications with anybody at any time
17 concerning this section of the report?

18 A. Yeah, I don't recall.

19 Q. Do you recall whether you ever told
20 anybody at any time that any aspect of this
21 section of the report was inaccurate or
22 incomplete?

23 A. I don't recall.

24 Q. As you sit here today, do you have
25 any reason to believe that this section of the

1 WATERHOUSE - 10-19-21

2 audit report is incomplete or inaccurate in any
3 way?

4 And I'm happy to give you a moment
5 to -- to look at it, if you would like.

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Same.

8 A. I mean, I would have to look at -- I
9 would have to look at the bill to the note
10 schedule to make sure I know you presented me
11 with materiality, but again, there might be a
12 note as of 12/31/18 that somehow was -- was
13 under materiality not disclosed. I don't -- I
14 don't know. I would need more information.

15 Q. Okay. But without more information,
16 you have no reason to believe anything this
17 section is inaccurate; correct?

18 MS. DANDENEAU: Objection to form.

19 A. I don't. I mean, you know, this was
20 part of the audit.

21 Q. Thank you. Now, you will see if we
22 could scroll just a little bit more that each
23 of the first five paragraphs concerns
24 specifically the four affiliates that we've
25 been discussing and Mr. Dondero.

1 WATERHOUSE - 10-19-21

2 MR. MORRIS: If we could go the
3 other way, La Asia. We don't need Okada.
4 We're going to have to thread the needle.
5 Okay. Good, perfect.

6 Q. Do you see those five paragraphs
7 certain the four affiliates and Mr. Dondero as
8 we've been referring to today?

9 A. Yes.

10 Q. Okay. And do you see at the end of
11 every paragraph it states, quote: A fair value
12 of a partnership's outstanding notes receivable
13 approximates the carrying value of the notes
14 receivable?

15 A. Yes, I see that.

16 Q. Do you have an understanding of what
17 that means?

18 A. Yes.

19 Q. What is your understanding of that
20 sentence?

21 A. It is the -- again, the -- the fair
22 value, right, which is -- which is what the --
23 what Highland could sell that asset for. This
24 statement is comparing the fair value of the
25 notes to the carrying value, so the carrying

1 WATERHOUSE - 10-19-21

2 value is the line item that you showed me
3 earlier that is in Notes and Other Amounts Due
4 from Affiliates.

5 Q. Okay. Is another way to say this is
6 that the fair market value of the notes equals
7 the principal amount and -- withdrawn.

8 Is the fair way to interpret this
9 that the fair market value of the notes equals
10 all remaining unpaid principal and interest due
11 under the notes?

12 MS. DANDENEAU: Object to the form.

13 MS. DEITSCH-PEREZ: Objection, form.

14 A. I don't know the answer to that,
15 because I don't recall where -- where any --
16 where -- in what line item was the interest
17 component reported.

18 Q. All right. Well, if we look in this
19 audit report, you will see in the middle of the
20 first paragraph, for example, it states that as
21 of December 31st, 2018, total interest and
22 principal due on outstanding promissory notes
23 was approximately \$5.3 million.

24 Do you see that?

25 A. I do.

1 WATERHOUSE - 10-19-21

2 Q. Is that the carrying value or the
3 fair value?

4 A. That would be the carrying value --

5 Q. And is the last --

6 A. -- in my opinion.

7 Q. Okay. And it is in your opinion as
8 the chief financial officer of Highland during
9 the period of time that you described; right?
10 It is an educated opinion?

11 A. I'm reading this at face value. I'm
12 taking that as that is carrying value.

13 Q. Okay. And does the last sentence
14 say that the carrying value is roughly
15 approximate to the fair market value?

16 MS. DANDENEAU: Objection to form.

17 MS. DEITSCH-PEREZ: Objection, form.

18 A. Again, this note to the financial
19 statement is specific to notes and other
20 amounts due from affiliates.

21 Q. Correct.

22 A. If the interest component is
23 reported elsewhere on the balance sheet, you
24 know, it -- it -- it could be off. Again, I
25 don't have the detail. I don't know, but yes,

1 WATERHOUSE - 10-19-21

2 look, I mean, if you -- I mean, if you are
3 saying the 5.3 million is in the notes and
4 other amounts due from affiliates, then the
5 last statement is saying the fair value
6 approximates 5.3 million. That is what that
7 last sentence is saying.

8 Q. Do you see in the middle of the
9 first paragraph -- not in the middle, the next
10 to last sentence there is a statement that the
11 partnership will not demand payment on amounts
12 that exceed HCMFA's excess cash availability
13 prior to May 31st, 2021.

14 Do you see that?

15 A. I do.

16 Q. Do you know when Highland agreed not
17 to demand payment as described in that
18 sentence?

19 A. I don't know specifically.

20 Q. Do you know why Highland agreed not
21 to demand payment on HCMFA's notes until May
22 2021?

23 A. Yes.

24 Q. Why was that decision made?

25 A. You know, well, it -- it -- that

1 WATERHOUSE - 10-19-21

2 decision was made as to not put HCMFA into a
3 position where it didn't have sufficient assets
4 to pay for the demand note.

5 Q. And at the time the agreement was
6 entered into, pursuant to which the partnership
7 wouldn't demand payment, did HCMFA have
8 insufficient assets to satisfy the notes if a
9 demand had been made?

10 MS. DANDENEAU: Objection to form.

11 A. I don't have HCMFA's financial
12 statements in front of me as of 12/31/18.

13 Q. Was there a concern that HCMFA would
14 be unable to satisfy its demands under the
15 notes if demand was made?

16 MS. DANDENEAU: Objection to form.

17 A. Well, there is -- I don't recall --
18 I mean, there is something, right, in place to
19 basically not demand payment until May 31, 2021
20 as detailed here.

21 Q. And who made the decision to enter
22 into -- who made the decision on behalf of
23 Highland not to demand payment until May 31st,
24 2021?

25 A. I'm trying to remember. I don't

1 WATERHOUSE - 10-19-21

2 remember exactly -- I don't remember if it was
3 myself or -- or Jim Dondero who -- who -- there
4 was -- there was something signed, from what I
5 recall, that -- that -- that backed up this
6 line item in the -- in the notes I'm -- look,
7 I'm, I'm --

8 Q. We will get to that.

9 A. You --

10 Q. I'm just --

11 A. You have -- I mean --

12 Q. We're going to give that to you.

13 I'm going to give that to you.

14 A. You -- you -- you have all the
15 documents. I don't have the documents, and
16 that is what makes it so hard. I don't have
17 any documents to prepare for this deposition;
18 right? You have all -- I don't -- I don't -- I
19 don't remember, but, you know, again, it would
20 probably be myself or Jim.

21 Q. Do you know if Highland received
22 anything in return for its agreement not to
23 make a demand for two years?

24 A. I don't -- I don't think it referred
25 anything.

1 WATERHOUSE - 10-19-21

2 Q. And did you and Mr. Dondero discuss
3 HCMFA's ability to satisfy the notes if a
4 demand was made at the time this agreement was
5 entered into?

6 MS. DANDENEAU: Objection to form.

7 A. I don't -- I don't -- I don't recall
8 having a specific conversation, if I did, or --
9 or David Klos.

10 Q. Okay. I'm just asking if you recall
11 any conversations that you had.

12 A. I don't recall.

13 Q. Okay. Do you know why Highland
14 loaned the money to HCMFA that is the subject
15 of the notes described in this paragraph?

16 A. I don't remember specifically why
17 5.3 million was loaned. I mean, I -- it would
18 have to be put in the context.

19 Q. Do you have any recollection at all
20 as to why Highland ever loaned any money to
21 HCMFA?

22 A. Yes.

23 MS. DANDENEAU: Objection to form.

24 Q. What do you remember about that?

25 A. There was a Highland Global

1 WATERHOUSE - 10-19-21

2 Allocation Fund, which was a -- a fund managed
3 by Highland Capital Management Fund Advisors.
4 There was a -- we -- I'm just telling you,
5 there was -- there was -- there was a -- a
6 ultimately a NAV error found in this fund while
7 it was an open-ended fund and, you know, there
8 were amounts owed by the advisor in -- in
9 relation to that NAV error.

10 There were also, for the same fund,
11 that same fund was ongoing an
12 open-end-to-close-end conversion, and as part
13 of that proposal, shareholders who voted for
14 the conversion received compensation from the
15 advisor.

16 Q. All right. Now, the events that
17 you're describing occurred in the spring of
18 2019; right?

19 A. These started back -- I think, I
20 mean --

21 Q. I apologize.

22 A. -- that -- I mean, the answer to
23 that is no.

24 Q. I apologize, the loans that were
25 made in connection with the events that you're

1 WATERHOUSE - 10-19-21

2 describing occurred in May 2019; right?

3 MR. RUKAVINA: Objection to the
4 extent that calls for a legal conclusion.

5 A. I don't recall specifically what
6 amounts of money were moved when, for what
7 purpose.

8 Q. Okay. Fair enough. Going to the
9 next paragraph, do you recall that NexPoint
10 Advisors had obtained a number of loans from
11 Highland, and they rolled up those loans into
12 one note in approximately 2017?

13 A. This is for NexPoint Advisors?

14 Q. Yes.

15 A. I -- I mean, I don't -- I don't
16 recall the NexPoint Advisors loan being a
17 roll-up loan, but --

18 Q. Do you know why?

19 A. But, look, if you have documents
20 that show -- I mean, look, I just don't recall.

21 Q. Okay. That is fair. Do you know
22 why -- do you have any recollection as to why
23 Highland loaned money to NexPoint?

24 A. Yes.

25 Q. Why did High -- why do you recall --

1 WATERHOUSE - 10-19-21

2 what is the reason you recall Highland lending
3 money to NexPoint?

4 A. I mean, I was just -- I just -- I
5 just recall. I mean, I just -- I don't
6 remember why.

7 Q. I understand. And I'm asking you if
8 you recall --

9 A. Oh, why -- I thought you say --
10 NexPoint Advisors was launching a fund which
11 is -- I believe that the legal name is NexPoint
12 Capital, Inc. And it -- it provided a
13 co-invest into that fund.

14 And, from what I remember, the --
15 the -- that NexPoint borrowed money from
16 Highland at the time to make that co-invest.

17 Q. So this was an investment that
18 NexPoint was required to make; is that right?

19 MS. DANDENEAU: Objection to form.

20 A. I don't know if it was required to
21 make, I don't recall that, or if it just made
22 it.

23 Q. Okay. But your recollection is that
24 NexPoint made an investment and they borrowed
25 money from Highland to finance the investment.

1 WATERHOUSE - 10-19-21

2 Do I have that right?

3 A. Yes.

4 Q. How about HCRE? Do you know why

5 HCRE borrowed money from Highland?

6 A. I don't remember specifically.

7 Q. Do you remember generally?

8 A. Generally, yeah -- I mean, yes.

9 Q. Can you tell me your general

10 recollection as to why Highland loaned money to

11 HCRE?

12 A. For -- for -- for investment

13 purposes.

14 Q. So HCRE made the investment and it

15 obtained a loan, or loans, from Highland in

16 order to finance that investment or those

17 investments.

18 Do I have that right?

19 A. I mean, I -- you know, generally.

20 Q. Okay. How about Highland Management

21 Services, Inc.?

22 Do you have any recollection as to

23 why HCMS borrowed money from Highland?

24 A. Generally.

25 Q. What is your general recollection as

1 WATERHOUSE - 10-19-21

2 to why HCMS borrowed money from Highland?

3 A. For -- for investment purposes.

4 Q. So it is the same thing, HCMS wanted
5 to make investments and it borrowed money from
6 Highland in order to finance those investments;
7 is that right?

8 A. I mean, yes, generally. I mean, I
9 can't -- I don't -- on the services, there --
10 there are several loans in these schedules.
11 You know, I can't remember why every single one
12 of these were made, but I would say, yeah, I
13 mean, generally.

14 Q. Okay. I appreciate that.

15 MR. MORRIS: Let's go to the page
16 with Bates No. 251. La Asia, are you
17 there?

18 MS. CANTY: Sorry, John. It went
19 out for a minute. Can you say that again.
20 I don't know what is going on.

21 MR. MORRIS: The page with Bates
22 No. 251, can we go to that.

23 MS. CANTY: Yes, sorry.

24 MR. MORRIS: Keep going to the
25 bottom. Yeah, there you go.

1 WATERHOUSE - 10-19-21

2 Q. Do you see, Mr. Waterhouse, that
3 there is a section there called Subsequent
4 Events?

5 A. I do.

6 Q. And does this relate to the last
7 sentence above the signature line on the
8 management representation letter that we talked
9 about earlier where you made the representation
10 that you disclosed subsequent events?

11 A. I mean, it relates to it, but not in
12 its entirety.

13 Q. Okay.

14 MR. MORRIS: If we can scroll up to
15 capture the entirety of this section right
16 here.

17 Q. And what do you mean by that, sir?

18 MR. MORRIS: Yeah, right there.

19 Perfect.

20 A. There are -- there are different
21 subsequent events in -- under GAAP. So there
22 are -- and -- and -- so what we see in the
23 notes to the financial statements are one type
24 of subevent.

25 Q. Okay. And -- and would the type of

1 WATERHOUSE - 10-19-21

2 subsequent event relating to affiliate loans be
3 captured in this section if they were -- if
4 they were made after the end of the fiscal year
5 and prior to the issuance of the audit report?

6 A. Yes, if they were deemed material or
7 disclosable.

8 Q. Okay. I appreciate that.

9 Do you see the next to the last
10 entry there? It says, Over the course of 2019
11 through the report date, HCMFA issued
12 promissory notes to the partnership in the
13 aggregate amount of \$7.4 million?

14 A. Yes.

15 Q. And does that refresh your
16 recollection that those are the notes that
17 related to the NAV error that you mentioned
18 earlier?

19 A. I don't -- I don't remember the
20 exact. Again, there are -- I mentioned two
21 line items; right?

22 Q. Yes.

23 A. I mean, it was the GAAP conversion
24 process plus the -- the NAV error. I don't
25 have the details. I don't recall specifically

1 WATERHOUSE - 10-19-21

2 if -- you know, what -- if that 7.4 million was
3 solely attributable to the NAV error.

4 Q. Okay. But there is no question that
5 Highland told PricewaterhouseCoopers that over
6 the course of 2019 HCMFA issued promissory
7 notes to the partnership in the aggregate
8 amount of \$7.4 million; correct?

9 A. In the course of the audit, we would
10 have produced all promissory notes in our
11 possession, including the ones that are
12 detailed here.

13 Q. Do you recall that you signed the
14 two promissory notes that are referenced in
15 that provision?

16 MS. DANDENEAU: Objection to form.

17 A. I didn't recall initially but I've
18 been reminded.

19 Q. Okay. And -- and do you recall that
20 those notes are dated May 2nd and May 3rd,
21 2019?

22 A. Yes.

23 Q. So that was just a month before the
24 audit was completed; correct?

25 A. Yes. I think we had a June 3rd

1 WATERHOUSE - 10-19-21

2 date, right, if -- if my memory serves me
3 right.

4 Q. Yes, I will represent to you that
5 your memory is accurate in that regard.

6 Did anybody ever instruct you as the
7 CFO to correct this statement that we're
8 looking at in subsequent events?

9 A. So let me understand. You're saying
10 when I was CFO at Highland Capital did anyone
11 ever ask me to correct the -- over the course
12 of 2019 through the report date HCMFA issued
13 promissory notes, this statement?

14 Q. Right.

15 A. Not that I'm aware.

16 Q. While you were the CFO of Highland,
17 did anybody ever tell you that that sentence
18 was wrong?

19 A. Not that I'm aware.

20 Q. Highland -- withdrawn.

21 HCMFA disclosed these notes in its
22 own audited financial statements; right?

23 MR. RUKAVINA: Objection, form.

24 A. I assume that these would be
25 material -- if these are material financial

1 WATERHOUSE - 10-19-21

2 statements, yes, they -- they -- they should be
3 and they were likely disclosed.

4 Q. Now, there is no statement
5 concerning the 2019 notes about the forbearance
6 that we looked at in the affiliated note
7 section of the report; right?

8 MS. DANDENEAU: Objection to form.

9 Q. I'll withdraw. That was bad.

10 Do you recall when we were looking
11 at the paragraph concerning HCMFA earlier it
12 had that disclosure about the agreement whereby
13 Highland wouldn't ask for demand on the -- on
14 the HCMFA notes?

15 A. Yes.

16 Q. That forbearance disclosure is not
17 made with respect to the 2019 notes; right?

18 A. Not -- look, not that I can recall,
19 unless -- unless it was done at a subsequent
20 day.

21 Q. Right. And it is not in the
22 subsequent event section that we're looking at
23 right now where the 2019 notes are described;
24 right?

25 A. Right. But this is through

1 WATERHOUSE - 10-19-21

2 June 3rd. It could have been done on June 4th.

3 I don't -- I don't -- I don't recall.

4 Q. Okay.

5 MR. MORRIS: Can we put up on the
6 screen the HCMFA audit report. And while
7 we're --

8 MS. DANDENEAU: What exhibit is
9 this?

10 MR. MORRIS: La Asia, what number is
11 that?

12 MS. CANTY: 45.

13 MR. MORRIS: So this will be marked
14 as Exhibit 45.

15 (Exhibit 45 marked.)

16 MS. CANTY: Yeah, and I will put it
17 in the chat.

18 MS. DANDENEAU: Thank you.

19 Q. Okay. All right. Do you see that
20 this is the consolidated financial statements
21 for HCMFA for the period ending 12/31/18?

22 A. Yes.

23 Q. As the treasurer of HCMFA at the
24 time, did you have to sign a management
25 representation letter similar to the one that

1 WATERHOUSE - 10-19-21

2 we looked at earlier for Highland?

3 A. I would imagine I would have been
4 asked to. I don't recall if I did.

5 Q. Do you recall ever being asked by an
6 auditor to sign a management representation
7 letter and then not doing it?

8 A. No.

9 MR. MORRIS: Can we just scroll down
10 again. I just want to see the date of the
11 document.

12 A. I mean, let me -- you know, there
13 are different versions to management
14 representation letters I will qualify.

15 Yes, there are certain -- from time
16 to time auditors can make representations
17 that -- in the rep letter that is being
18 proposed that are inaccurate or out of scope or
19 things like that and they've asked for
20 signature.

21 In that context, yes. I mean, you
22 know -- I mean, if I have been asked to sign
23 and make those representations and those
24 representations are invalid, yes, I would not,
25 I mean, I -- I wouldn't sign that.

1 WATERHOUSE - 10-19-21

2 Q. Okay. PricewaterhouseCoopers served
3 as HCMFA's outside auditors as well; correct?

4 A. Yes.

5 Q. Do you see that this audit report is
6 signed on June 3rd, 2019, just like the
7 Highland audit report?

8 A. That is correct.

9 Q. And did the process of -- of
10 preparing HCMFA's audit report, was that the
11 same process that Highland followed when it did
12 its audit report at this time?

13 A. I mean, it is a different entity.
14 There are different assets. You know, it --
15 it -- it is -- as you saw, Highland's
16 financials are on a consolidated basis. This
17 is different, so it is under the same control
18 environment and team.

19 Q. Okay. I appreciate that. So the
20 same control environment and team participated
21 in the preparation of the audit for Highland
22 and for HCMFA at around the same time; correct?

23 A. Yes.

24 MR. MORRIS: Can we go to page 17 of
25 the report. I don't have the Bates number.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you see that just like
3 Highland's audited financial report, HCMFA's
4 audited financial report also has a section
5 related to subsequent events?

6 A. Yes.

7 Q. And am I reading this correctly that
8 just as Highland had done, HCMFA disclosed in
9 its audited financial report a subsequent event
10 that related to the issuance of promissory
11 notes to Highland in the aggregate amount of
12 \$7.4 million in 2019?

13 A. That is what I see in the report.

14 Q. And you were the treasurer of HCMFA
15 at the time; right?

16 A. Yes, to the best of my knowledge.

17 Q. And did anybody ever tell you prior
18 to the time of the issuance of this audit
19 report that that sentence relating to HCMFA's
20 2019 notes was inaccurate or wrong in any way?

21 A. Not that I recall.

22 Q. As you sit here right now, has
23 anybody ever told you that that sentence is
24 inaccurate or wrong in any way?

25 A. Not that I recall.

1 WATERHOUSE - 10-19-21

2 Q. I apologize if I asked you this
3 already, but has anybody ever told you at any
4 time that you are not authorized to sign the
5 promissory notes that are the subject of the
6 sentence we're looking at?

7 A. Not that I recall.

8 Q. Did anybody ever tell you at any
9 time that you had made a mistake when you
10 signed the promissory notes that are the
11 subject of this sentence?

12 A. Say that again. Did anyone ever say
13 that I made a mistake?

14 Q. Let me ask the question again.
15 Did anybody ever tell you at any
16 time that you made a mistake when you signed
17 the two promissory notes in Highland's favor on
18 behalf of HCMFA in 2019?

19 A. Not that I recall.

20 MR. MORRIS: Let's just look at the
21 promissory notes quickly. Can we please
22 put up Document Number 1, and so this is in
23 the pile that y'all have. We'll just go
24 for a few more minutes and we can take our
25 lunch break.

1 WATERHOUSE - 10-19-21

2 Q. All right. So I don't know if you
3 have seen this before, sir. Do you see that
4 this is a complaint against HCMFA?

5 A. Yes, I am looking at it on the
6 screen.

7 Q. Okay. And have you ever seen this
8 document before?

9 A. I went through some of these
10 documents with my counsel here yesterday.

11 MR. MORRIS: All right. Can we go
12 to Exhibit 1 of this document.

13 Q. Do you see Exhibit 1 is a
14 \$2.4 million promissory note back in 2019?

15 A. Yeah, I found it in the book. Yes,
16 I have it here in front of me.

17 Q. And this is a demand note, right, if
18 you look at Paragraph 2?

19 A. Yes.

20 Q. And this is a note where the maker
21 is HCMFA, and Highland is the payee; right?

22 A. Yes.

23 MR. MORRIS: And if we can scroll
24 down, can we just see Mr. Waterhouse's
25 signature.

1 WATERHOUSE - 10-19-21

2 Q. Is that your signature, sir?

3 A. Yes, it is.

4 Q. And did you sign this document on or
5 around May 2nd, 2019?

6 A. I don't recall specifically signing
7 this, but this is my signature.

8 Q. Okay. And do you recall that
9 Highland transferred \$2.4 million to HCMFA at
10 or around the time you signed this document?

11 A. I don't recall specifically. I
12 would want to, as I sit here today, go back and
13 confirm that, but again, presumably that --
14 that -- that did happen.

15 Q. You wouldn't have signed this
16 document if you didn't believe that HCMFA
17 either received or was going to receive
18 \$2.4 million from Highland; is that fair?

19 A. I mean, it -- if -- if -- if there
20 wasn't a transfer of value, yeah, I mean, you
21 know, I would have no reason to -- to sign a
22 note.

23 Q. And -- and Highland wouldn't have
24 given this note to PricewaterhouseCoopers if --
25 withdrawn.

1 WATERHOUSE - 10-19-21

2 HCMFA wouldn't have given this note
3 to PricewaterhouseCoopers if it hadn't received
4 the principal value of -- of the note in the
5 form of a loan; correct?

6 MR. RUKAVINA: Objection, legal
7 conclusion, speculation and form.

8 A. Again, we -- what we provided to PwC
9 were, as part of the audit, any promissory
10 notes executed and outstanding. You know, as a
11 part of the audit, they, you know, they -- they
12 have copies of all the bank statements,
13 things -- things of that sort.

14 MR. MORRIS: Okay. Can we go to
15 Exhibit 2.

16 (Exhibit 2 marked.)

17 Q. Do you see that this is a promissory
18 note dated May 3rd, 2019 in the amount of
19 \$5 million?

20 A. Yes.

21 Q. Do you believe this is also a demand
22 note if you look at Paragraph 2?

23 A. Yes.

24 Q. And do you see that HCMFA is the
25 maker, and Highland is the payee?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. And if we go to the bottom, can we
4 just confirm that that is your signature?

5 A. Yes.

6 Q. And together these notes are the
7 notes that are referred to both in Highland and
8 HCMFA's audited financial reports in the
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11 A. They -- they -- they totaled
12 \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal
16 conclusion.

17 A. Yeah. I mean, I'm -- I was the
18 officer of -- of HCMFA. You know, I -- I'm not
19 the legal expert on -- on what that -- what
20 that confers to me or what it doesn't. I mean,
21 that is my signature on the notes.

22 Q. And you believed you were authorized
23 to sign the notes; is that fair?

24 A. I signed a lot of documents in my
25 capacity, just because it is operational in

1 WATERHOUSE - 10-19-21

2 nature. So, you know, to me this was just
3 another document, to be perfectly honest.

4 Q. Sir, would you have signed
5 promissory notes with the principal amount of
6 \$7.4 million if you didn't believe you were
7 authorized to do so?

8 MS. DANDENEAU: Objection to form.

9 Q. Are you frozen?

10 A. No. I'm just -- you know, it is --
11 you know, again, I typically don't sign
12 promissory notes, and I don't recall why I
13 signed these, but -- you know, but I did.

14 Q. All right. So listen carefully to
15 my question. Would you have ever signed
16 promissory notes with a face amount of
17 \$7.4 million without believing that you were
18 authorized to do so?

19 A. No. I mean, I'm -- I'm putting my
20 signature on there, so no.

21 Q. Okay. And would you have signed two
22 promissory notes obligating HCMFA to pay
23 Highland \$7.4 million without Mr. Dondero's
24 prior knowledge and approval?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 A. You know, from -- from what I recall
4 around these notes, you know, I don't recall
5 specifically Mr. -- Mr. Dondero saying to -- to
6 make this a loan.

7 So my conversation with Mr. Dondero
8 around the culmination of the NAV error as
9 related to TerreStar which was a -- a -- I
10 think it was a year and a half process. I
11 don't know, it was a multi-month process, very
12 laborious, very difficult.

13 When we got to the end, I had a
14 conversation with Mr. Dondero on where to, you
15 know, basically get the funds to reimburse the
16 fund, and I recall him saying, get the money
17 from Highland.

18 Q. And so he told you to get the money
19 from Highland; is that right?

20 A. That is what I recall -- in my
21 conversation with him, that is -- that is what
22 I can recall.

23 Q. Do you know who drafted these notes?

24 A. I don't.

25 Q. Did you ask somebody to draft the

1 WATERHOUSE - 10-19-21

2 notes?

3 A. I didn't ask -- I don't specifically
4 ask people to draft notes really. I mean,
5 again, you know, the legal group at Highland is
6 responsible and has always been responsible for
7 drafting promissory notes.

8 Q. So based on your -- based on the
9 practice, you believe that somebody from the
10 Highland's legal department would have drafted
11 these notes. Do I have that right?

12 MS. DEITSCH-PEREZ: Object to the
13 form. John, I also asked you for the Word
14 versions of these notes so we could look at
15 the properties, and you have not provided
16 them. Are you intending to?

17 MR. MORRIS: No.

18 Q. Can you answer my question, sir?

19 A. Again, I --

20 MS. DANDENEAU: Do you want him to
21 repeat it?

22 A. Yeah, why don't you repeat it?

23 Q. Sure. Mr. Waterhouse, based on the
24 practice that you have described in your
25 understanding, do you believe that these notes

1 WATERHOUSE - 10-19-21

2 would have been drafted by somebody in the
3 legal department?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. Yes.

7 Q. Okay. And do you know who would
8 have instructed -- do you have any knowledge as
9 to who would have instructed the legal
10 department to draft these notes?

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 A. It was whoever was working -- I
14 mean, it was likely someone on the team. I
15 mean, I don't remember exactly on every note or
16 every document, but, again, a lot of these
17 things of this nature -- they're operational in
18 nature -- were handled by the team.

19 The team knows to -- I mean, we
20 don't draft documents. We're not lawyers.
21 We're not attorneys. It is not what I do or
22 accountants do.

23 So they are always instructed to go
24 and -- and go to the legal team to get
25 documents like this drafted. Also, when you go

1 WATERHOUSE - 10-19-21

2 to the legal team, the -- you know, we always
3 loop in compliance. And compliance -- when you
4 go to the legal team, compliance is part of
5 legal team. They're made aware of -- of -- of
6 these types of transactions.

7 Q. And do you believe that you had
8 the -- withdrawn.

9 Did you ever tell Mr. Dondero --
10 (inaudible) -- did you see those?

11 A. Sorry.

12 MS. DEITSCH-PEREZ: I did not hear
13 the end of that question.

14 Q. Did you ever tell Mr. Dondero that
15 you signed these two notes?

16 A. I don't recall ever -- no, I don't
17 recall having a conversation with him.

18 Q. Did you ever discuss these two notes
19 with him at any time?

20 A. The conversation, I recall, was what
21 I described earlier. And that is the only time
22 I recall ever discussing this.

23 Q. Okay. But the corporate accounting
24 group had a copy of this -- of these two notes.
25 And pursuant to the audit process, the

1 WATERHOUSE - 10-19-21

2 corporate accounting group gave the two notes
3 to PricewaterhouseCoopers in connection with
4 the audit; correct?

5 MS. DANDENEAU: Objection to form.

6 A. Yes. I mean, that is -- yeah, I
7 mean, they -- unless the legal team can also
8 retain copies of items like this. I mean, I
9 don't know everything that they would retain as
10 well.

11 The legal team would also, if they
12 had documents as part of audits, turn that over
13 to the auditors as well. So it could have been
14 the corporate accounting team. It could be
15 someone on the legal team.

16 Q. All right. So you didn't -- you
17 didn't draft this note; right?

18 A. I -- I -- I did not.

19 Q. But somebody at Highland did; is
20 that fair?

21 MS. DEITSCH-PEREZ: Object to the
22 form.

23 A. I don't know. I mean, we can go to
24 the legal team. I don't -- I'm not sitting
25 behind someone in legal. Maybe they went to

1 WATERHOUSE - 10-19-21

2 outside counsel. I have no idea.

3 Q. Did you have any reason to believe
4 you weren't authorized to sign this note,
5 either of these two notes?

6 A. I think I have already answered that
7 question.

8 Q. Okay. You didn't give these notes
9 to PricewaterhouseCoopers; correct?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall giving these to
12 PricewaterhouseCoopers.

13 Q. And in the practice that you have
14 described, somebody in the corporate accounting
15 group would have given these two notes to
16 PricewaterhouseCoopers; correct?

17 MS. DANDENEAU: Objection to form.

18 A. I think I've answered that. I said
19 either the corporate accounting team or maybe
20 the legal team.

21 MR. MORRIS: Okay. Why don't we
22 take our lunch break here.

23 VIDEOGRAPHER: We're going off the
24 record at 1:04 p.m.

25 (Recess taken 1:04 p.m. to 1:49 p.m.)

1 WATERHOUSE - 10-19-21

2 VIDEOGRAPHER: We are back on the
3 record at 1:49 p.m.

4 Q. Mr. Waterhouse, did you speak with
5 anybody during the break about the substance of
6 this deposition?

7 A. I spoke to -- to Deb and Michelle.

8 Q. About the substance of the
9 deposition?

10 A. Yes.

11 Q. Can you tell me what you talked
12 about?

13 MS. DANDENEAU: No. We object on
14 the basis of privilege.

15 Q. Okay. You are going to follow your
16 counsel's objection here?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we put up on the
20 screen Exhibit 35.

21 (Exhibit 35 marked.)

22 Q. Are you able to see that document,
23 sir?

24 A. Yes.

25 Q. Have you ever seen an incumbency

1 WATERHOUSE - 10-19-21

2 certificate before?

3 A. I have.

4 Q. Do you have a general understanding
5 of what an incumbency certificate is?

6 A. I have a general understanding.

7 Q. What is your general understanding?

8 A. You know, those -- my general
9 understanding is that the incumbency
10 certificate basically lists folks that can --
11 are like authorized signers.

12 Q. Okay. And do you see that this is
13 an incumbency certificate for Highland Capital
14 Management Fund Advisors, L.P.?

15 A. Yes.

16 Q. Okay. And if we could scroll down
17 just a little bit, do you see that it's dated
18 effective as of April 11th, 2019?

19 A. Yes, I see that.

20 Q. Okay. And is that your signature in
21 the middle of the signature block?

22 A. Yes, it is.

23 Q. And by signing it, did you accept
24 appointment as the treasurer of HCMFA effective
25 as of April 11th, 2019?

1 WATERHOUSE - 10-19-21

2 A. Again, I'm not the legal -- I don't
3 know if this makes me the treasurer or the
4 appointment. I don't know -- I don't know
5 that, so I don't -- I don't know if that
6 document -- again, I think -- again, I'm not
7 the legal expert. I think isn't there --
8 aren't there other legal documents that detail
9 who the officers are that could be incorporated
10 or things like that? Again, I don't want to
11 play armchair attorney here.

12 Q. I'm not asking you for a legal
13 conclusion. I'm asking you for your knowledge
14 and understanding. When you signed this
15 document, did you understand that you were
16 accepting an appointment as the treasurer of
17 HCMFA?

18 MS. DANDENEAU: Objection to form.

19 MS. DEITSCH-PEREZ: Objection, form.

20 A. Again, I don't think this -- that
21 wasn't my understanding. I don't think this
22 makes -- this document makes me the treasurer.

23 Q. What do you think this document --
24 why did you sign this document?

25 MS. DEITSCH-PEREZ: Objection to

1 WATERHOUSE - 10-19-21

2 form.

3 MR. MORRIS: You're objecting to the
4 form of the question when I asked him why
5 did you sign the document? What is the
6 basis for the objection?

7 MS. DEITSCH-PEREZ: Because, John, I
8 think that it does call for a legal
9 conclusion other than -- with him saying
10 because somebody told me to sign this
11 document. But if you want to go there,
12 that is fine.

13 MR. MORRIS: Okay.

14 MS. DANDENEAU: I don't think --
15 he's already said he's not a lawyer.

16 MR. MORRIS: I'll allow the witness
17 to answer this question.

18 Q. Why did you sign this document, sir?

19 A. I mean, our -- our legal group would
20 bring by these incumbency certificates from
21 time to time. I have no idea why they're being
22 updated, and I was asked to sign.

23 Q. Did you ask anybody, what is this
24 document?

25 A. No.

1 WATERHOUSE - 10-19-21

2 Q. Did anybody tell you why they needed
3 you to sign the document?

4 A. Not that I can recall.

5 Q. You testified earlier that you
6 understood that you served as the acting
7 treasurer for HCMFA; correct?

8 A. Yes.

9 Q. How did you become the acting
10 treasurer of HCMFA?

11 MS. DANDENEAU: Objection to form.

12 A. I don't -- I don't know the legal --
13 I don't know the legal mechanic of how I became
14 the acting treasurer.

15 Q. I'm not asking for the legal
16 mechanic. I'm asking you as the person who
17 is --

18 MS. DANDENEAU: John, you said --

19 MR. MORRIS: Stop.

20 MS. DANDENEAU: -- how did you
21 become the treasurer. That is --

22 MR. MORRIS: Please stop.

23 MS. DANDENEAU: That is a legal
24 question.

25 MR. MORRIS: I am not asking any

1 WATERHOUSE - 10-19-21

2 legal questions, to be clear. I'm asking
3 for this witness' understanding as to how
4 he became the acting treasurer of HCMFA.
5 If he doesn't know, he can say he doesn't
6 know, but this legal stuff is nonsense, and
7 I really object to it.

8 Q. Sir, I'm asking you a very simple
9 question.

10 MS. DANDENEAU: Argumentative.

11 Q. You testified -- you testified that
12 you became the acting treasurer of HCM --
13 HCMFA; correct?

14 A. Yes.

15 Q. How did that happen?

16 MS. DANDENEAU: Again, object to
17 form.

18 MR. MORRIS: I can't wait to do this
19 in a courtroom. Good God.

20 Q. Go ahead, sir.

21 A. I don't know the exact process of
22 how that happened.

23 Q. Do you have any idea whether signing
24 this document was part of the process?

25 MR. MORRIS: You know what --

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: Objection.

3 MR. MORRIS: -- withdrawn. You guys
4 want to do this, I can't wait. I can't
5 wait. This is the craziest stuff ever.

6 MS. DANDENEAU: John, he said he's
7 not a lawyer, and you are asking him for a
8 legal conclusion, and he says he doesn't
9 know, and you persist.

10 MR. MORRIS: Okay.

11 MS. DANDENEAU: So you can ask these
12 questions --

13 MR. MORRIS: Did anyone -- please
14 stop talking.

15 MS. DANDENEAU: -- at another
16 point -- no, no, no, I'm entitled to talk,
17 too; right? If you're going to make these
18 accusations as if we're trying to stonewall
19 you, this is not the witness to ask that
20 question.

21 MR. MORRIS: I can't -- I can't
22 wait -- I can't wait to do this in a
23 courtroom. I will just leave it at that.

24 MS. DANDENEAU: That's right, I'm
25 sure you can't.

1 WATERHOUSE - 10-19-21

2 Q. Did anyone ever tell you, sir, that
3 even though you were the acting treasurer of
4 HCMFA, that you were not authorized to sign the
5 two promissory notes that we looked at before
6 lunch?

7 A. I'm not sure I understand the
8 question. I wasn't -- I mean, I'm -- I'm the
9 current acting treasurer.

10 Q. Did anybody ever tell you at any
11 time that even though you were the acting
12 treasurer of HCMFA, that you were not
13 authorized to sign the two promissory notes
14 that we looked at before lunch?

15 MS. DANDENEAU: Objection to form.

16 A. Not that I recall.

17 Q. Did anybody ever tell you at any
18 time that you were not authorized to sign the
19 two promissory notes that we looked at before
20 lunch?

21 A. Not that I recall.

22 Q. Did anybody ever tell you at any
23 time that you should not have signed the two
24 promissory notes that we looked at before
25 lunch?

1 WATERHOUSE - 10-19-21

2 A. Not that I recall.

3 Q. Did you ever tell anybody at any
4 time that you weren't authorized to sign the
5 two promissory notes that we looked at before
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any
9 time that you made a mistake when you signed
10 the two promissory notes that we looked at
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you
14 have any reason to believe that you were not
15 authorized to sign the two documents that we
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid
19 incumbency certificate, I mean, this does --
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,
22 does that give you comfort that you were
23 authorized to sign the two promissory notes
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 MS. DANDENEAU: Objection, form.

4 A. Yes.

5 Q. As of October 20th -- withdrawn.

6 I'm trying to take your mind back to
7 a year ago, October 2020. Do you recall at
8 that time that the boards of the retail funds
9 were making inquiries about obligations that
10 were owed by the advisors to Highland in
11 connection with their 15(c) review?

12 MS. DANDENEAU: Objection to form.

13 A. I don't -- I don't recall.

14 Q. As of October 2020, you had no
15 reason to believe you weren't authorized to
16 sign the two promissory notes that we just
17 looked at; correct?

18 MS. DANDENEAU: Objection, form.

19 MS. DEITSCH-PEREZ: Objection to
20 form.

21 A. I didn't think about it in October
22 of 2020, but I mean --

23 Q. Did you have any reason to believe
24 at that time that you weren't authorized to
25 sign the two notes that we just looked at?

1 WATERHOUSE - 10-19-21

2 A. Not that I'm aware, no.

3 Q. Did you have any reason to believe a
4 year ago that you made a mistake when you
5 signed those two notes?

6 A. Not that I'm aware.

7 Q. A year ago you believed that HCMFA
8 owed Highland the unpaid principal amounts that
9 were due under those two notes; correct?

10 A. They're -- they're promissory notes
11 that were -- as you presented, that were --
12 that were executed. Whether they're valid or
13 if there's other reasons, I didn't -- I don't
14 know.

15 Q. I'm not asking you whether they're
16 valid or not. I'm asking you for your state of
17 mind. A year ago you believed that HCMFA
18 was -- was obligated to pay the unpaid
19 principal amount under the two notes that you
20 signed; correct?

21 A. Yeah, I'm -- I'm -- yes.

22 Q. Thank you. Are you aware -- you're
23 aware that -- that in 2017, NexPoint issued a
24 note in favor of Highland in the approximate
25 amount of \$30 million; correct?

1 WATERHOUSE - 10-19-21

2 A. I'm -- I'm -- I'm generally aware.

3 Q. Okay. And are you generally aware
4 that from time to time, after the note was
5 issued by NexPoint, that moneys were applied to
6 principal and interest that were due under the
7 NexPoint note?

8 A. Yes, I'm generally aware.

9 Q. Okay. And did anybody ever tell you
10 that the payments that were made against the
11 NexPoint notes were made by mistake?

12 A. Yes.

13 Q. And is it the one payment that we
14 talked about earlier today?

15 A. We talked about a lot of things
16 today. What payment are we talking about?

17 Q. Okay. Who told you that any payment
18 made against the NexPoint note was made by
19 mistake?

20 A. D.C. Sauter.

21 Q. When did Mr. Sauter tell you that?

22 A. I don't -- I don't remember
23 specifically.

24 Q. Do you remember what payments --

25 A. Sometime -- sometime this year.

1 WATERHOUSE - 10-19-21

2 Q. Sometime in 2021?

3 A. Yes.

4 Q. Do you remember what payment he was
5 referring to?

6 A. It was the -- the payment made in
7 January of 2021 or -- yeah, January of -- of
8 this -- January of 2021.

9 Q. Okay. So did anybody ever tell you
10 at any time that any payment that was made
11 against principal --

12 A. And -- and -- and -- hold on, and it
13 may have been other -- again, it may have been
14 that payment or -- or there may have been what
15 he was explaining, a misapplication of prior
16 payments as well.

17 Q. Can you -- can you give me any
18 specificity -- withdrawn.

19 Withdrawn. Can you tell me
20 everything that Mr. Sauter told you about --
21 about errors in relation to payments made
22 against principal and interest due under the
23 NexPoint note?

24 MS. DANDENEAU: Can I just --

25 MR. RUKAVINA: Hold on. Hold on.

1 WATERHOUSE - 10-19-21

2 I'm going to object here, and I'm going to
3 instruct the witness not to answer
4 depending on the discussion that you had --
5 Mr. Waterhouse, I'm the lawyer for
6 NexPoint, and as everyone here knows, D.C.
7 Sauter is in-house counsel.

8 So if you and Mr. Sauter were having
9 a factual discussion and him preparing his
10 affidavit, et cetera, then go ahead and
11 answer that. But if you were having a
12 discussion as to our legal strategy in this
13 lawsuit, or anything having to do with
14 that, then do not answer that.

15 And if you need to talk to either
16 your counsel or me about that, then we need
17 to have that discussion now.

18 A. Okay. Yeah, I don't -- I don't
19 really know how to make that distinction, so
20 maybe I need to talk to counsel before I
21 answer, or if I can answer.

22 Q. Let me just ask you this question:
23 Did -- did you have any conversation with
24 Mr. Sauter about any payment of principal and
25 interest prior to the time that you left

1 WATERHOUSE - 10-19-21

2 Highland's employment, or did it happen after
3 you left Highland's employment?

4 A. I don't -- I don't recall if -- I
5 don't recall. I mean, it was sometime in 2021.
6 I don't remember if it was before or after I
7 was let go from Highland.

8 Q. Okay. So -- so nobody told you
9 prior to 2021 that any error or mistake was
10 made in the application of payments against
11 principal and interest due on the NexPoint
12 note. Do I have that right?

13 A. Yeah, I don't -- I don't recall this
14 being in 2020.

15 Q. Okay. And it didn't happen in 2019;
16 correct?

17 A. I don't recall that happened.

18 Q. And it didn't happen in 2018;
19 correct?

20 A. I don't -- I don't recall that
21 happening.

22 Q. And it didn't happen in 2017;
23 correct?

24 A. I don't recall.

25 Q. But -- but you believe the

1 WATERHOUSE - 10-19-21

2 conversation took place in 2021. You just
3 don't remember if it was before or after you
4 left Highland's employment. Do I have that
5 right?

6 A. It was sometime this year. I
7 don't -- I don't remember.

8 Q. Okay. Did you report this
9 conversation to Mr. Seery at any point?

10 A. I don't believe so.

11 Q. Did you report this conversation to
12 anybody at DSI at any time?

13 A. I don't recall.

14 Q. Do you have -- you don't have a
15 recollection of ever doing that; correct?

16 A. Yeah, that's right. I don't recall
17 doing that.

18 Q. Do you recall telling anybody at
19 Pachulski Stang about the conversation you
20 recall with Mr. Sauter?

21 A. No, I don't -- I don't recall.

22 Q. Did you tell any of the independent
23 board members about your conversation with
24 Mr. Sauter?

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Did you tell any of the employees at
3 Highland before you left Highland's employment
4 about this call that you had with Mr. Sauter?

5 MS. DANDENEAU: Objection to form.

6 A. No, I don't -- no, I don't recall.

7 Q. NexPoint -- to the best of your
8 knowledge, did NexPoint ever file a proof of
9 claim against Highland to try to recover moneys
10 that were mistakenly paid against the principal
11 and interest due under the note?

12 A. Okay. Hold on. You are saying did
13 NexPoint Advisors file a proof of claim to
14 Highland for errors related to payments under
15 the NexPoint note to Highland?

16 Q. Correct.

17 A. I'm -- I'm -- I'm not -- I'm not
18 aware.

19 Q. Are you aware --

20 A. I'm not the legal person here, I
21 don't know.

22 Q. I'm just asking for your knowledge,
23 sir.

24 A. Yeah, I don't know. I'm not aware.

25 Q. Are you aware of any claim of any

1 WATERHOUSE - 10-19-21

2 kind that NexPoint has ever made to try to
3 recover the amounts that it contends were -- or
4 that Mr. Sauter contend were mistakenly applied
5 against principal and interest due under the
6 NexPoint note?

7 A. I'm not aware.

8 MS. DANDENEAU: Objection to form.

9 Q. Okay. The advisors' agreements with
10 the retail funds are subject to annual renewal;
11 correct?

12 A. Yes.

13 Q. And do you participate in the
14 renewal process each year?

15 A. Yes.

16 Q. What role do you play in the renewal
17 process?

18 A. I'm -- I'm asked by the retail board
19 to walk-through the advisors financials.

20 Q. And do you do that in the context of
21 a board meeting?

22 A. Yes, it is -- yes, it is typically
23 done in a board meeting.

24 Q. And do you recall the time --
25 does -- does the renewal process happen around

1 WATERHOUSE - 10-19-21

2 the same time each year?

3 A. Yes, it is -- it is around the same
4 time every year.

5 Q. And what -- what time period of the
6 year does the renewal process occur?

7 A. Approximately the September
8 timeframe.

9 Q. During that process, in your
10 experience, does the board typically conduct
11 its own diligence and ask for information?

12 A. Does the board ask for lots of -- I
13 mean, just -- I mean, lots of information as a
14 part of that -- that -- as part of that board
15 meeting and that process.

16 Q. Okay. And do you recall that the
17 process in 2020 spilled into October?

18 A. Yes. Yes.

19 Q. Okay. And as part of the process in
20 2020, the retail board asked -- asked what are
21 referred to as 15(c) questions; right?

22 A. I guess I don't want to be -- they
23 asked 15(c) -- are you saying they asked 15(c)
24 questions and this is why it went into October
25 or --

1 WATERHOUSE - 10-19-21

2 Q. No, I apologize.

3 Do you have an understanding of
4 what -- of what 15(c) refers to in the context
5 of the annual renewal process?

6 A. Yes, generally.

7 Q. All right. What is your general
8 understanding of the term "15(c)" in the
9 context of the annual renewal process?

10 A. I -- I think 15(c) is the section
11 that -- that -- you know, that -- that the
12 board has to evaluate every year, the retail
13 board. They have to, you know, go through,
14 evaluate, and go through that approval process
15 on a yearly basis.

16 Q. Okay.

17 MR. MORRIS: Can we put up on the
18 screen Exhibit 36, please.

19 (Exhibit 36 marked.)

20 MR. MORRIS: I guess let's just
21 start at the bottom so Mr. Waterhouse can
22 see what is here.

23 Q. You see this begins with an email
24 from Blank Rome to a number of people.

25 MR. MORRIS: And if we can scroll

1 WATERHOUSE - 10-19-21

2 up -- keep going just a little bit.

3 Q. You will see that there is an email
4 from Lauren Thedford to Thomas Surgent and
5 others where she reports that she was attaching
6 and reproducing below additional 15(c)
7 follow-up questions from the board.

8 Do you see that?

9 A. Yes.

10 Q. And do you see Question No. 2 asks
11 whether there are any material outstanding
12 amounts currently payable or due in the future
13 (e.g., notes) to HCMLP by HCMFA or NexPoint
14 Advisors or any other affiliate that provides
15 services to the funds?

16 Do you see that?

17 A. Yes.

18 Q. And -- and did you -- do you recall
19 that in -- in October of 2020 the retail boards
20 were asking for that information?

21 A. I don't recall it, but there --
22 they're obviously asking in this email.

23 Q. Okay.

24 MR. MORRIS: Can we scroll up a
25 little bit, please.

1 WATERHOUSE - 10-19-21

2 Q. And then do you see that
3 Ms. Thedford includes you on the email string
4 on Tuesday, October 6th, at 5:52?

5 A. Yes.

6 Q. And she asks you and Dave Klos and
7 Kristin Hendrix for advice on that particular
8 Request No. 2 that I have just read; right?

9 A. Yes.

10 Q. Okay. Can you tell me who
11 Ms. Thedford is?

12 A. She was an attorney that was in the
13 legal group.

14 Q. At Highland Capital Management,
15 L.P.?

16 A. I'm -- I'm -- I'm -- I don't
17 remember if she was an employee of Highland or
18 any of the advisors.

19 Q. Okay. Do you know if she served as
20 the corporate secretary for both HCMFA and
21 NexPoint?

22 A. Yes.

23 Q. And -- okay.

24 Do you know whether Ms. Thedford
25 held any positions in relation to the retail

1 WATERHOUSE - 10-19-21

2 funds as we defined that term?

3 A. Yes.

4 Q. What is your understanding of the
5 positions that Ms. Thedford held at the retail
6 funds?

7 A. I -- I recall her being an officer.
8 I don't recall her title.

9 Q. Okay. Is she still an officer at
10 any of the retail funds today?

11 A. No.

12 Q. Do you know when she ceased to be an
13 officer of the retail funds?

14 A. Approximately.

15 Q. And when did she approximately cease
16 to be an officer of the retail funds?

17 A. It was in -- it was in early of
18 2021.

19 Q. Okay. Do you know when she became
20 an officer of the retail funds?

21 A. I don't recall.

22 Q. To the best of your recollection,
23 was she an officer of the retail funds in
24 October of 2020?

25 A. I believe so.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you know what title she
3 held in her capacity as an officer, if any?

4 A. I told you I don't remember.

5 Q. Okay. So she sends this email to
6 you at 5:52 p.m. on October 6th.

7 And if we can scroll up to the
8 response, you responded a minute later with a
9 one-word answer: Yes.

10 Do you see that?

11 A. Yes.

12 Q. And -- and yes is -- yes was in
13 response to the retail board's Question No. 2,
14 right, whether there are any material
15 outstanding amounts currently payable or due in
16 the future?

17 A. Yes.

18 MR. MORRIS: And can we scroll up to
19 see what happened next.

20 Q. So Ms. Thedford writes back to you a
21 few minutes later and she asks whether you
22 could provide the amounts.

23 Do you see that?

24 A. Yes.

25 Q. And then you respond further and you

1 WATERHOUSE - 10-19-21

2 refer her to the balance sheet that was
3 provided to the board as part of the 15(c)
4 materials.

5 Do you see that?

6 A. Yes.

7 Q. And -- and did the advisors provide
8 to the board certain balance sheets in 2020 in
9 connection with the 15(c) review?

10 A. Yes, they did.

11 Q. Okay. And were the amounts that
12 were outstanding or that were to be due in the
13 future by the advisors to Highland included in
14 the liability section of the balance sheet that
15 was given to the retail board?

16 A. Yes. Notes would be reflected as
17 liabilities.

18 Q. Okay. And --

19 A. If I'm understanding your question
20 correctly.

21 Q. You are. And -- and -- and those
22 liabilities you -- you were -- you believed
23 were responsive to the retail board's question;
24 correct?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And then if we can scroll up,
3 you see Ms. Thedford responds to you
4 nine minutes later with a draft response.

5 Do you see that?

6 A. Yes.

7 Q. And she says that she is taking from
8 the 6/30 financials certain information about
9 amounts that were due to HCMLP and affiliates
10 as of June 30th, 2020.

11 Do you see that?

12 A. I do.

13 Q. Okay. And did you believe, as the
14 treasurer of NexPoint and HCMFA and as the CFO
15 of Highland, that the information that
16 Ms. Thedford obtained from the 6/30 financials
17 was accurate and responsive in relation to the
18 retail fund board's question?

19 A. I just want to make sure I
20 understand the question.

21 Are you saying that the financial
22 information provided to the retail board as
23 part of the 15(c) process, which included
24 financial statements as of June 30th of 2021,
25 did I feel like those were responsive to their

1 WATERHOUSE - 10-19-21

2 questions?

3 Q. Yes.

4 A. Yes.

5 Q. Thank you.

6 MS. DEITSCH-PEREZ: John, it is not
7 in the chat yet. Can you just make sure it
8 gets put in there.

9 MR. MORRIS: Sure.

10 MS. CANTY: I put it in there. I
11 think maybe I just sent it directly, so let
12 me make sure it says to everyone. But I
13 did put it in there. I will try again.

14 MR. MORRIS: Thank you, La Asia.

15 MS. DANDENEAU: What number is it.

16 MR. MORRIS: What, the Bates number?

17 MS. DEITSCH-PEREZ: No, the --
18 this -- yeah, 36 is not in the chat.

19 MR. MORRIS: Okay. We'll get it.

20 MS. DANDENEAU: I think that
21 Ms. Canty just sent it to me originally.
22 Sorry.

23 MR. MORRIS: Okay. We will get it
24 there.

25 MS. CANTY: Okay. It is there now

1 WATERHOUSE - 10-19-21

2 for everyone.

3 MS. DEITSCH-PEREZ: Got it. Thank
4 you.

5 Q. Do you recall if the proposed
6 response that Ms. Thedford crafted was
7 delivered to the retail board with the -- with
8 the yellow dates having been completed?

9 A. I don't know.

10 MR. MORRIS: Davor, I'm going to ask
11 that the advisors and -- the advisors of
12 both HCMFA and NexPoint produce to me any
13 report that was given to the retail board
14 concerning the promissory notes at issue,
15 including the obligations under the notes.

16 Q. Do you know -- do you know if
17 ultimately NexPoint informed the retail board
18 in response to its question that NexPoint owed
19 Highland approximately 23 or \$24 million?

20 MS. DANDENEAU: Objection to the
21 form.

22 A. Sorry, are you asking, did NexPoint
23 tell the retail board that it owed Highland?

24 Q. Let me ask a better question,
25 Mr. Waterhouse.

1 WATERHOUSE - 10-19-21

2 Did -- do you know if anybody ever
3 answered the retail board's question that was
4 Number 2?

5 A. I don't -- I can't say for sure.

6 Q. Okay. Do you recall -- I think you
7 testified earlier that you walked through the
8 advisors' financials with the retail board;
9 correct?

10 A. Yes.

11 Q. And as part of that process, did you
12 disclose to the retail board the obligations
13 that NexPoint and HCMFA had to Highland under
14 promissory notes?

15 A. The retail board, as I stated
16 earlier, receives financial information,
17 balance sheet, income statement information
18 from the advisors. That information is
19 provided to the retail board in connection with
20 the 15(c) process.

21 So any notes between the advisors
22 and the Highland would be -- anything would be
23 detailed in those financial statements.

24 Q. Do you recall in 2020 ever speaking
25 with the retail board about the advisors'

1 WATERHOUSE - 10-19-21

2 obligations under the notes to Highland?

3 MS. DANDENEAU: Objection to form.

4 MS. DEITSCH-PEREZ: Object to the

5 form.

6 A. I don't recall specifically.

7 Q. Do you have any general recollection
8 of discussing with the retail board the
9 advisors' obligations to Highland under the
10 notes that they issued?

11 MS. DANDENEAU: Object to the form.

12 MS. DEITSCH-PEREZ: Object to the

13 form.

14 A. I just recall generally just -- it
15 is just -- I present the financial statements,
16 and if they have questions, I answer their
17 questions and walk them through.

18 I don't recall what they asked. I
19 don't recall where the discussion went. I
20 don't recall anything of that nature.

21 Q. Okay. Do you know if anybody on
22 behalf of HCMF -- HCMFA ever told the retail
23 board that HCMFA had no obligations under the
24 two 2019 notes that you signed? Withdrawn.

25 Do you know whether anybody on

1 WATERHOUSE - 10-19-21

2 behalf of HCMFA ever told the retail boards
3 that you weren't authorized to sign either of
4 the two 2019 notes?

5 MS. DANDENEAU: Objection to form.

6 A. I'm not aware.

7 Q. Are you aware of anybody on behalf
8 of HCMFA ever telling the retail boards that
9 your execution of the two 2019 notes was a
10 mistake?

11 MS. DANDENEAU: Objection to form.

12 A. I'm not aware.

13 Q. Are you aware of anybody on behalf
14 of HCMFA ever telling the retail boards that
15 HCMFA did not have to pay the amounts reflected
16 in the two notes that you signed in 2019?

17 A. I'm not aware.

18 Q. Do you know whether anybody ever
19 told the retail boards -- withdrawn.

20 Do you know whether anybody ever
21 told the retail boards that Highland has
22 commenced a lawsuit to recover on the two notes
23 that you signed in 2019?

24 A. I'm not aware.

25 Q. Are you aware of anybody informing

1 WATERHOUSE - 10-19-21

2 the retail boards that Highland has sued to
3 recover on the NexPoint note?

4 A. I'm not aware.

5 Q. Do you know whether anybody ever
6 told the retail board that Highland had
7 declared a default with respect to the two
8 HCMFA notes that you signed in 2019?

9 A. I'm not aware.

10 Q. Are you aware of anybody ever
11 informing the retail boards that Highland had
12 declared a default under the NexPoint note?

13 A. I'm not aware.

14 Q. Are you aware of anybody telling the
15 retail board that Highland made a demand for
16 payment under the 2019 notes that you signed on
17 behalf of HCMFA?

18 A. I'm not aware.

19 Q. Let's -- let's see if there is a
20 response to Ms. Thedford's email, if we can
21 scroll up.

22 Do you see you responded to
23 Ms. Thedford five minutes after she provided
24 the draft response to you?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And do you see that Dustin
3 Norris is copied on this email?

4 A. Yes, he is.

5 Q. Great. Do you know whether
6 Mr. Norris held any positions at either of the
7 advisors as of October 6, 2020?

8 A. I will go back to -- I'm not the
9 legal expert of what appoints you or how or
10 why, but you did see Dustin's name on the
11 incumbency certificate that you produced
12 earlier.

13 Q. Do you know what his title was in
14 October of 2020?

15 MS. DANDENEAU: Objection to form.

16 A. I don't -- I don't recall.

17 Q. Was he -- did he have a title with
18 each of the advisors, to the best of your
19 recollection?

20 A. I don't recall.

21 Q. Do you know why he is included on
22 this email string?

23 A. I didn't add Dustin. It looks like
24 Lauren did. I don't know why she added him or
25 not. You would have to ask her.

1 WATERHOUSE - 10-19-21

2 Q. Does Mr. Norris play a role in
3 formulating the advisors' responses to the
4 questions asked by the retail board in
5 connection with the 15(c) annual review?

6 MS. DANDENEAU: Objection to form.

7 A. He -- Dustin Norris is there in the
8 board meetings. But -- so he has a role, yes.

9 Q. Okay. And does Mr. Norris hold any
10 positions, to the best of your knowledge, in
11 relation to any of the retail funds?

12 A. I don't -- I don't believe he does.

13 Q. How about Mr. Post, do you know
14 whether Mr. Post holds any position in either
15 of the advisors?

16 A. I mean, he -- he -- yes.

17 Q. What is your understanding of the
18 positions that Mr. Post holds in relation to
19 the advisors?

20 MS. DANDENEAU: Objection to form.

21 A. He is an employee of NexPoint
22 Advisors. He is also the chief compliance
23 officer for -- for NexPoint.

24 Q. Who is the chief compliance officer
25 for HCMFA, if you know?

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: Objection to form.

3 A. That would be Jason as well.

4 Q. Okay. Now, looking at your
5 response, you noted initially that nothing was
6 owed under shared services. Do I have that
7 right in substance?

8 A. Yeah. I think I'm being responsive
9 to Lauren's question here, whether any of the
10 shared service invoices are outstanding.

11 Q. Right.

12 A. Yes.

13 Q. And that is because -- and that is
14 because the retail the retail board has asked
15 for the disclosure of all material obligations
16 that were owed to HCMLP either then or in the
17 future; isn't that right?

18 MS. DANDENEAU: Objection to form.

19 Q. We can go back down and look.

20 A. Look, I don't know if that's a
21 material item, I mean, again, but sure.

22 Q. Okay. But there were no shared
23 services outstanding; correct?

24 MS. DANDENEAU: Objection to form.

25 A. That is what this email seems to

1 WATERHOUSE - 10-19-21

2 indicate.

3 Q. And you wouldn't have written it if
4 you didn't believe it to be true at the time;
5 correct?

6 A. Correct.

7 Q. And when you referred to shared
8 services outstanding, what you meant there was
9 that neither NexPoint nor HCMFA owed Highland
10 any money under the shared services agreements
11 that they had with Highland as of October 6th,
12 2020; right?

13 A. I don't know if it is as of October
14 6, 2020 or if it was from -- like through the
15 financials -- through the date of the
16 financials as of June 30.

17 Q. Okay. And then you noted that
18 HCMA -- the HCMFA note is a demand note; right?

19 A. Yes.

20 Q. And then you referred Ms. Thedford
21 to Kristin Hendrix for the term of the NexPoint
22 note. Do I have that right?

23 A. Yes.

24 Q. And then you refer to that agreement
25 that is referenced in the 2018 audited

1 WATERHOUSE - 10-19-21

2 financials about Highland's agreement not to
3 make demand upon HCMFA until May 2021; correct?

4 A. Correct.

5 Q. And then -- and then the next thing
6 you write is that the attorneys think that BK
7 doesn't change that, but don't know for sure at
8 the end of the day.

9 Do you see that sentence?

10 A. Yes.

11 Q. Which attorneys were you referring
12 to?

13 A. I don't remember.

14 Q. Did you have a conversation with
15 attorneys concerning whether the bankruptcy
16 would change or alter in any way the agreement
17 not to make a demand under the HCMFA note?

18 A. Look, yeah, I mean, I don't
19 specifically remember, but generally, I mean,
20 it is in this email. I don't -- I don't -- I
21 don't -- I don't remember who I talked to or,
22 you know, was it inside counsel, outside
23 counsel, but obviously I talked to somebody.

24 Q. Do you have any recollection --

25 A. Well, I don't even know if it's --

1 WATERHOUSE - 10-19-21

2 actually, it may not even have been me. I say
3 the attorneys in, you know, a lot of -- like I
4 talked about the team.

5 It could have been someone on the
6 team, like, hey, we need to run this down, and
7 maybe they talked to attorneys again and
8 relayed that information to me.

9 So I really don't know if I spoke or
10 someone else did or -- or, I mean, and maybe it
11 wasn't even from corporate accounting. Maybe
12 it was, you know, other -- I'm kind of
13 summarizing, you know, again, so I don't really
14 know -- I can't really say for sure. I don't
15 remember how I came about of this knowledge.

16 Q. I appreciate your efforts,
17 Mr. Waterhouse, but I will just tell you that
18 if I ask a question and you don't know the
19 answer or you don't recall, I'm happy to accept
20 that. I don't -- I don't want you to
21 speculate, so I want to be clear about that.
22 So I appreciate it.

23 Let me just ask you simply: Do you
24 know what attorneys -- can you identify any of
25 the attorneys who thought that the bankruptcy

1 WATERHOUSE - 10-19-21

2 process didn't change the agreement?

3 A. I don't recall.

4 Q. Okay. Perfect.

5 And then let's look at the last
6 sentence. It says, quote: The response should
7 include, as I covered in the board meeting,
8 that both entities have the full faith and
9 backing from Jim Dondero, and to my knowledge
10 that hasn't changed.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Prior to October 6th, 2020,
14 had you told the retail board that HCMFA and
15 NexPoint have the full faith and backing from
16 Jim Dondero?

17 A. Yes.

18 Q. Do you remember in the context in
19 which you told the retail board that?

20 A. I mean, generally, yes.

21 Q. Tell me what you recall.

22 A. So we were walking through the
23 financials from the advisors; right? So as I
24 described to you, you have got HCMFA and NPA.
25 And these -- the financials, you know, show

1 WATERHOUSE - 10-19-21

2 they have liabilities on them that exceed
3 assets.

4 So the retail board has asked, okay,
5 you know, how -- you know, if -- if these
6 liabilities come due or they're payable, you
7 know, how does that come about?

8 And, you know, the response is,
9 well, the advisors have the -- the full faith
10 and backing from -- from Jim Dondero.

11 Q. And how did you know that the
12 advisors had the full faith and backing from
13 Jim Dondero? What was the basis for that
14 statement that you made to the retail board?

15 A. I talked to Jim about it at some
16 point in the past.

17 Q. And did you tell Mr. Dondero that
18 you were going to inform the retail board that
19 the advisors had his full faith and backing
20 before you actually told that to the retail
21 board?

22 A. I don't recall having that
23 conversation.

24 Q. Do you recall if you ever informed
25 Mr. Dondero that you had disclosed or told the

1 WATERHOUSE - 10-19-21

2 retail board that the advisors had the full
3 faith and backing of Mr. -- Mr. Dondero?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. I don't recall discussing that with
7 him at the time.

8 Q. When you told this to the board, was
9 Mr. Dondero participating in the discussion?

10 A. Not that I recall.

11 Q. Withdrawn. Was it not -- withdrawn.

12 Do you recall whether -- when you
13 covered this issue with the board, was that in
14 a -- a Zoom call or a Webex call? Was it a
15 telephone call? Was it in-person? Like where
16 were you physically in relation to the board?

17 A. I believe I was at home.

18 Q. Okay. Can you identify every person
19 that you recall who was present for this
20 disclosure other than -- other than the board
21 members themselves?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I don't recall everyone on the call.

25 Q. Can you identify anybody who was on

1 WATERHOUSE - 10-19-21

2 the call?

3 A. Other than the board members?

4 Q. Yes.

5 A. Lauren Thedford. I mean, there
6 are -- there are many -- my section is just one
7 of many sections that are just -- you know, as
8 you can appreciate, this is a long board
9 meeting.

10 I can't recall specifically, really
11 even generally, or who was on when this was
12 discussed. But Lauren was typically on for the
13 entire time.

14 Q. I apologize if I asked you this, but
15 do either of Mr. Norris or Mr. Post hold any
16 positions relative to the retail funds?

17 A. I think you asked me this already,
18 John.

19 Q. Okay. I just don't recall. Can you
20 just refresh my recollection if I did, in fact,
21 ask you the question?

22 A. I don't believe -- if we can go
23 back. I don't believe Mr. Norris has a title
24 at the retail funds. Mr. -- and Mr. Post is
25 the CCO of the advisor, the advisors.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you know if either of them
3 have a position with the retail board -- with
4 the retail funds?

5 A. I don't believe Mr. Norris has a
6 position with the retail funds.

7 Q. All right. What about Mr. Post?

8 A. Mr. Post is the CCO of the advisors.

9 Q. Okay. Does he hold any position --

10 A. I don't believe so.

11 Q. -- with the retail funds?

12 A. I don't believe so.

13 Q. Okay.

14 A. I don't know if being the CCO for
15 the advisor conveys something for the retail
16 funds. Again, I am not -- that is the legal
17 compliance part of it. I don't know.

18 Q. Why did you tell the retail board
19 that the advisors have the full faith and
20 backing from Mr. Dondero?

21 MS. DANDENEAU: Objection to form.

22 A. It is -- it is -- it is what has
23 been discussed with them prior.

24 Q. And were you -- were you trying to
25 give them comfort that even though the

1 WATERHOUSE - 10-19-21

2 liabilities exceeded the assets that the
3 advisors would still be able to meet their
4 obligations as they become due?

5 MS. DANDENEAU: Objection to form.

6 MS. DEITSCH-PEREZ: Object form.

7 A. I -- I can't -- I don't remember
8 specifically the conversation, but generally --
9 you know, generally, yes. And that is why --
10 but, you know, again, in this email saying, you
11 know, I am sure I qualified it with the retail
12 board, you know, as I said I like -- you know,
13 to my knowledge, that hasn't changed. But,
14 again, generally -- generally that is what I
15 remember.

16 Q. Okay. Do you recall if in the
17 advisors' response to the retail board's
18 question if the response included any statement
19 concerning Mr. Dondero and -- and the full
20 faith and backing that he was giving to the
21 advisors?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I don't -- I don't remember
25 specifically what was provided.

1 WATERHOUSE - 10-19-21

2 Q. Okay.

3 A. And I don't really -- I don't really
4 remember generally either.

5 Q. Okay.

6 MR. MORRIS: So -- so, again, I'm
7 just going to ask Mr. Rukavina if your
8 clients can produce as soon as possible the
9 15(c) response, the written response that
10 the advisors made, if any, to the board's
11 Question No. 2.

12 I'm not looking for the whole
13 response, but I certainly want the response
14 to Question No. 2.

15 Q. Do you have a general understanding
16 as to the amount by which -- withdrawn.

17 Did -- did the assets of --
18 withdrawn.

19 Did the liabilities of HCMFA exceed
20 its assets in 2020?

21 MS. DANDENEAU: Objection to form.

22 MS. DEITSCH-PEREZ: Objection, form.

23 A. I believe I have already answered
24 that question earlier, I think. I believe I
25 said yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And did the liabilities of
3 NexPoint exceed its assets in 2020?

4 MS. DEITSCH-PEREZ: Objection to
5 form.

6 A. I don't believe so.

7 Q. Okay. So -- so it was only one of
8 the two advisors who had liabilities that
9 exceeded the value of the assets.

10 Do I have that right?

11 MS. DEITSCH-PEREZ: Objection to
12 form.

13 MS. DANDENEAU: Form.

14 A. Yes.

15 Q. And do you know, ballpark, the
16 amount by which the value of HCMFA's
17 liabilities exceeded their assets in 2020?

18 MS. DANDENEAU: Objection to form.

19 A. I don't -- I don't recall.

20 MR. MORRIS: I had specifically
21 requested in discovery the audited
22 financial reports for both advisors and
23 NexPoint. I think I may have gotten one
24 for NexPoint but I'm still waiting for the
25 balance. And I'm going to renew my request

1 WATERHOUSE - 10-19-21

2 for those documents too.

3 Q. Let's go to the next exhibit, which
4 is Number 10. So I think it is in your stack,
5 Mr. Waterhouse.

6 MR. MORRIS: And we can take the one
7 down from the screen and put up Number 10
8 for everybody.

9 (Exhibit 10 marked.)

10 Q. And I don't know if you have ever
11 seen this before, but I'm really putting it up
12 on the screen for purposes of turning to the
13 very last page of the document.

14 So this is a document that we have
15 been -- that we premarked as Exhibit 10. And
16 we're turning to the last page of the document,
17 which is a document that was filed in the
18 adversary proceeding 21-3004. And -- no, I
19 apologize, I think we -- right there. Perfect.

20 And it is page 31 of 31.

21 MR. MORRIS: I think there may have
22 been some something erroneously stapled to
23 the hard copy that I gave you folks, but
24 I'm looking for page 31 of 31 in the
25 document that begins with the first page of

1 WATERHOUSE - 10-19-21

2 Exhibit 10.

3 Q. Do you have that, Mr. Waterhouse?

4 A. I don't have it yet. I'm looking.

5 Q. All right. If you look at the top
6 right-hand corner, you will see it says page
7 hopefully something of 31?

8 A. Yes, I've got it now.

9 Q. Okay. You have got 31 of 31. You
10 can take a moment to read that, if you would
11 like.

12 A. (Reviewing document.) Okay.

13 Q. Have you ever seen this before?

14 A. I don't know if I have seen this
15 specific document, but, you know, I've --
16 I'm -- I'm aware of it.

17 Q. And is this the document that you
18 had in mind when you sent that email to
19 Ms. Thedford that we just looked at where you
20 said that Highland had agreed not to make a
21 demand upon HCMFA until May 2021?

22 A. Honestly, I don't -- it wasn't this
23 document. I mean, it's something like this,
24 yes. I mean, yes.

25 Q. Well --

1 WATERHOUSE - 10-19-21

2 A. It is something like this, but I
3 don't think it was this specific document.

4 Q. Well, but this document does say in
5 the last sentence that Highland agreed not to
6 seek -- not to demand payment from HCMFA prior
7 to May 31, 2021; right?

8 A. Yes.

9 Q. And are you aware of any other
10 document that was ever created pursuant to
11 which Highland agreed not to demand payment on
12 amounts owed by HCMFA before May 31, 2021?

13 A. Hold on. Are you asking, am I aware
14 of a document that by HCMFA that basically says
15 otherwise?

16 Q. No. Let me try again.

17 Are you aware of any other document
18 pursuant to which -- pursuant to which Highland
19 agreed not to make a demand on HCMFA until May
20 31st, 2021?

21 A. I'm -- I think there was something
22 in connection with -- with the -- with the
23 audit that basically says the same thing.

24 Q. Okay. And do you think that the
25 audit is referring to this particular document?

1 WATERHOUSE - 10-19-21

2 A. I don't know.

3 Q. All right. This document is dated
4 April 15, 2019. Do you see that?

5 A. I do.

6 Q. And do you remember that the audit
7 was completed on June 3rd, 2019?

8 A. Yes.

9 Q. And do you recall that the audited
10 financials -- and I'm happy to pull them up if
11 you would like, but do you recall that the
12 audited financials included a reference to the
13 agreement pursuant to which Highland agreed not
14 to make a demand until May 31st, 2021?

15 A. Yes, I remember.

16 Q. And as part of the process, would
17 you have expected the corporate accounting team
18 to have provided a copy of this document to
19 PwC?

20 MS. DANDENEAU: Objection to form.

21 A. Yes, I would have expected something
22 like this, or again, you know, some document
23 that basically states -- states the deferral
24 till May 31 of 2020.

25 Q. Okay.

1 WATERHOUSE - 10-19-21

2 A. May 31 of 2021, excuse me.

3 Q. And this document states the
4 deferral that you just described; correct?

5 A. It does.

6 Q. And this document states the
7 deferral that was described in the audited
8 financial statements that we looked at before;
9 correct?

10 A. It does.

11 MR. MORRIS: Okay. Can we scroll
12 down just a little bit to see who signed on
13 behalf of the acknowledgment there.

14 Q. Okay. So Mr. Dondero signed this
15 document on behalf of both HCMFA and Highland;
16 do you see that?

17 A. I do.

18 Q. Okay. Did you discuss this document
19 or the -- withdrawn.

20 Did you discuss the concept of the
21 deferral with Mr. Dondero in the spring of
22 2019?

23 A. I think I testified I don't recall.

24 Q. Okay. Do you know whose idea it was
25 to issue the acknowledgment in this form?

1 WATERHOUSE - 10-19-21

2 A. I don't recall.

3 MR. MORRIS: Can we scroll back up
4 to the document, please.

5 Q. Do you see in the beginning it says,
6 reference is made to certain outstanding
7 amounts loaned from Highland to HCMFA for
8 funding ongoing operations.

9 Do you see that?

10 A. Yes.

11 Q. And were you aware as the CFO of
12 Highland and as the treasurer of HCMFA that as
13 of April 15, 2019, Highland had made certain
14 loans to HCMFA to fund HCMFA's ongoing
15 operations?

16 A. Yes.

17 Q. And were you aware that those loans
18 were payable on demand and remained outstanding
19 as of December 31st, 2018?

20 A. Yes.

21 Q. And were you aware that those
22 amounts were payable on demand, and they
23 remained outstanding as of April 15, 2019?

24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 WATERHOUSE - 10-19-21

2 A. Well, this -- this document dated
3 April 15, 2019 says they have been deferred to
4 May 31, 2021.

5 Q. Right. But I'm just sticking to the
6 first paragraph where they refer to the
7 outstanding amounts. And in the end it says
8 the -- it remained outstanding on December
9 31st, 2018, and I think you told me that you
10 understood that, and then I'm just trying to
11 capture the last piece of it.

12 Did you understand that there were
13 amounts outstanding from the loan that Highland
14 made to HCMFA to fund ongoing operations as of
15 April 15th, 2019?

16 A. Yes.

17 Q. Thank you. Let's look at the next
18 sentence. HCMFA expects that it may be unable
19 to repay such amounts should they become due
20 for the period commencing today and continuing
21 through May 31st, 2021.

22 Do you see that?

23 MS. DANDENEAU: Objection to form.

24 A. I do.

25 Q. As the CFO -- withdrawn.

1 WATERHOUSE - 10-19-21

2 As the treasurer of HCMFA, did you
3 believe that -- do you believe that statement
4 was true and accurate at the time it was
5 rendered?

6 A. I mean, it -- it -- the answer to
7 that is I really didn't have any -- I didn't
8 have an opinion really.

9 Q. Did you do anything to educate
10 yourself in April of 2019 on the issue of
11 whether HCMFA could repay the amounts that it
12 owed to Highland should they become due?

13 A. I don't believe so.

14 Q. Did you at any time form any
15 opinions as to HCMFA's ability to repay all
16 amounts due to Highland should they become due?

17 A. Not really. I guess I don't...

18 Q. Well, you told the retail board that
19 HCMFA's liabilities exceeded their assets in
20 2020; correct?

21 A. Yes.

22 Q. Based on the work that you did to
23 prepare for the retail board, did you form any
24 view as to whether HCMFA would be unable to
25 repay the amounts that it owed to Highland

1 WATERHOUSE - 10-19-21

2 should they become due?

3 MS. DANDENEAU: Objection to form.

4 A. I mean, I -- when you look at that,
5 to answer you, completely, you know, again,
6 if -- the response I gave the retail board was,
7 you know, the -- the advice -- HCMFA advisors
8 have the -- have the full faith and backing of
9 Jim Dondero. So I didn't form an opinion of
10 whether the advisor could pay it or not.

11 Q. Did you form any view as to whether
12 the advisors could repay the amounts that it
13 owed to Highland should they become due without
14 the full faith and backing of Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Form.

17 A. I mean, if you -- if you -- if you
18 take that last statement out, I mean, it would
19 be difficult for HCMFA to pay back demand notes
20 at that time.

21 Q. And it was precisely for that reason
22 that you told the retail board that -- that the
23 retail -- that the advisors had the full faith
24 and backing of Mr. Dondero; correct?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. I mean, yes, as the mouthpiece, I
3 was relaying information.

4 Q. Okay. And you relayed that
5 information with the knowledge and approval of
6 Mr. Dondero; correct?

7 MS. DEITSCH-PEREZ: Object to the
8 form.

9 A. As I stated in the email, I don't
10 believe, and I think I testified I don't
11 believe I had conversations with Mr. Dondero at
12 the time of that board meeting.

13 Q. Did you tell the retail board that
14 the advisors had the full faith and backing of
15 Mr. Dondero without Mr. Dondero's prior
16 approval?

17 A. Yeah, I -- I -- yes, I'm -- like I
18 said, I think I testified earlier, I'm sure I
19 qualified it as well.

20 Q. What do you mean by that?

21 MS. DANDENEAU: Objection to form.

22 A. Again -- again, like I said in the
23 email, it has the full faith and backing of Jim
24 Dondero unless that has changed.

25 Q. Actually that is not what you said,

1 WATERHOUSE - 10-19-21

2 so let's put the email back up.

3 A. It is -- it is -- it is in the
4 email.

5 Q. Let's put the email back up. You
6 didn't say unless it has changed. You said you
7 believe it hasn't changed; right?

8 A. Okay. And to my knowledge that
9 hasn't changed, that is what it says.

10 Q. That's right.

11 A. But, again, I mean, that is -- I
12 don't know everything. And I'm not in every
13 conversation. I'm not -- to presume that I am,
14 is -- and you have to put myself -- as you
15 started this out, Mr. Morris, I was at home in
16 October of 2020 with COVID -- or, you know,
17 under these COVID times that we described is
18 very difficult.

19 We have all been working at home for
20 really the first time ever, undergoing
21 processes, procedures, control environments
22 that have been untested, and there is poor
23 communication.

24 So I am relaying, as I'm telling you
25 now, what is in the email. And unless

1 WATERHOUSE - 10-19-21

2 something has changed -- to my knowledge, it
3 hasn't changed, but it could have changed.

4 Q. When you say that the advisors have
5 the full faith and backing from Mr. Dondero,
6 did you intend to convey that, to the extent
7 the advisors were unable to satisfy their
8 obligations as they become due, Mr. Dondero
9 would do it for them?

10 MS. DANDENEAU: Object to the form.

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 And, John, we have given you a lot
14 of leeway here but this does not seem
15 relevant to this case. You seem sort of
16 taking a complete sort of diversion into
17 the allegations and the complaint just
18 filed on Friday, and so I would ask you to
19 move on because --

20 MR. MORRIS: And I will tell you --
21 I will tell you that I have never read that
22 complaint cover-to-cover. I have nothing
23 to do with the prosecution of those claims.
24 And this issue that we're talking about
25 right now is related solely to the

1 WATERHOUSE - 10-19-21

2 promissory notes that your clients refuse
3 to pay.

4 So I'm going to continue to ask my
5 questions, and I would ask the court
6 reporter to read back my last question.

7 (Record read.)

8 MS. DEITSCH-PEREZ: And then I
9 believe there were objections to form.

10 Q. You can answer the question.

11 A. Yes.

12 Q. Thank you very much, sir.

13 MR. MORRIS: Can we go back to the
14 other document, please?

15 Q. Mr. Waterhouse, do you know if this
16 document was ever shared with the retail board?

17 A. I don't recall.

18 Q. Did you ever share it with the
19 retail board?

20 A. I don't recall.

21 Q. Did you ever tell the retail board
22 about the substance of this document?

23 A. I don't recall.

24 Q. Did you ever tell the retail board
25 that Highland had agreed not to make a demand

1 WATERHOUSE - 10-19-21

2 against HCMFA until May 2021?

3 A. I don't recall.

4 Q. Do you know whether anybody on
5 behalf of the advisors ever informed the retail
6 board that Highland had agreed on April 15,
7 2019, not to make a demand against HCMFA under
8 the promissory notes?

9 A. I don't recall.

10 Q. Did you instruct Ms. Thedford or
11 anybody else responding to the retail board's
12 15(c) inquiry to disclose this document?

13 A. Did I instruct Ms. Thedford or
14 anyone else to -- to -- to produce this, to
15 disclose this document? Is that what you -- I
16 just want to make sure.

17 Q. Uh-huh.

18 A. Yeah, I don't -- I don't recall.

19 Q. Did you instruct anybody to inform
20 the retail board, in response to their question
21 as part of the 15(c) process, to -- to tell the
22 retail board about Highland's agreement not to
23 make a demand until 2021?

24 MS. DANDENEAU: Objection to form.

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Did you ever inform PwC that HCMFA's
3 liabilities exceeded its assets?

4 MS. DANDENEAU: Object to the form.

5 A. I don't -- I don't think I told
6 them. I mean, they -- they audited the
7 financial statements.

8 Q. Did -- do you know if anybody on
9 behalf of Highland ever informed
10 PricewaterhouseCoopers that HCMFA may be unable
11 to repay amounts owing to Highland, should they
12 become due?

13 MS. DANDENEAU: Objection to form.

14 A. Yes. Again, I think I testified
15 earlier that -- that this was communicated to
16 the auditors.

17 Q. Ideally --

18 A. I don't know who exactly did that.
19 I don't recall doing it, but, yeah, it was --
20 it was communicated. And that is why -- I
21 mean, there is a disclosure in the financial
22 statements; right?

23 Q. There is, and that disclosure
24 relates to the last sentence of this document;
25 correct?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Do you recall looking in the
4 document and seeing anything that was disclosed
5 with respect to the sentence above that?

6 A. No.

7 Q. Do you know whether anybody on
8 behalf of Highland ever informed
9 PricewaterhouseCoopers that HCMFA expects that
10 it may be unable to repay amounts due and owing
11 to Highland should they become due?

12 MS. DEITSCH-PEREZ: Object to the
13 form. I think that is the third time.

14 A. I don't recall. Again, as I said,
15 we -- all of this was given to the auditors.

16 Q. Do you know if Highland received
17 anything of value in exchange for its agreement
18 not to demand payment on amounts owed by HCMFA
19 prior to May 31st, 2021?

20 MS. DEITSCH-PEREZ: Object to the
21 form. That is the second time.

22 MS. DANDENEAU: Object to the form.

23 A. I have answered this question.

24 MR. RUKAVINA: Hold on. Object to
25 legal conclusion. Go ahead.

1 WATERHOUSE - 10-19-21

2 A. I have answered this question
3 before.

4 Q. And the answer was no?

5 A. I'm not aware.

6 Q. Now, this acknowledgment can't
7 possibly apply to the two notes that you signed
8 on behalf of HCMFA because those notes were
9 signed on May 2nd and May 3rd, 2019; is that
10 right?

11 MS. DANDENEAU: Objection to form.

12 A. Unless there is a drafting error.

13 Q. Okay. Are you aware of a drafting
14 error?

15 A. I'm not aware. I didn't -- I wasn't
16 part of -- I didn't sign this note or this
17 acknowledgment. I didn't draft it.

18 Q. But you do see it is dated April 15,
19 2019; right?

20 A. Yes.

21 Q. And this was a document that was
22 actually included by the advisors in a pleading
23 they filed with the Court; right?

24 MR. RUKAVINA: Well, I don't know
25 that so I object to form.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Let's go to the first page of
3 the document and just confirm that.

4 MR. AIGEN: Mr. Morris, I just note
5 that you already said there was some error
6 with the document that is listed as
7 exhibit --

8 MR. MORRIS: No. No, no, no.

9 MS. DEITSCH-PEREZ: Oh, okay.

10 MR. MORRIS: What I said is that
11 there is a few pages that were mistakenly
12 stapled to the end of the document.

13 MS. DEITSCH-PEREZ: Okay.

14 MR. MORRIS: There is no problem
15 with this document.

16 MS. DEITSCH-PEREZ: And just so
17 we're clear that the document -- the pages
18 that start with defendant's amended answer
19 are not intended to be part of this
20 document?

21 MR. MORRIS: That's correct.

22 MS. DEITSCH-PEREZ: And that the --
23 but it is your representation that the rest
24 of the document is -- is -- is correct
25 because we don't -- we don't have any way

1 WATERHOUSE - 10-19-21

2 of verifying that, we're just --

3 MR. MORRIS: You do, actually. You
4 could just go to Docket No. 21-3004.

5 MS. DEITSCH-PEREZ: If you want to
6 stop this deposition so we can go and pull
7 that document up, we're happy to do it. So
8 I am just asking you for your
9 representation.

10 MR. MORRIS: Sure. I gave that.

11 MS. DEITSCH-PEREZ: Okay.

12 Q. So do you see that this is a
13 document that was actually filed with the Court
14 by Highland Capital Management Fund Advisors?

15 A. No. I get with the first page in
16 the section. Maybe I'm looking at the wrong
17 thing. It says, Highland Capital Management.

18 Q. Don't worry about it. Don't worry
19 about it.

20 A. Maybe I went back -- okay.

21 MR. MORRIS: All right. Can we put
22 up on the screen Exhibit 2.

23 (Exhibit 2 marked.)

24 MR. MORRIS: I think it is
25 Exhibit 1.

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: I'm sorry, John, did
3 you say Exhibit 2 or Exhibit 1?

4 MR. MORRIS: It is Exhibit 2 in the
5 binders so it is premarked Exhibit 2. And
6 now I'm asking -- right there -- going to
7 Exhibit 1 to the document that was marked
8 as Exhibit 2.

9 MS. DANDENEAU: Got it. In the
10 binder there is no --

11 MS. DEITSCH-PEREZ: There is no
12 Exhibit 1.

13 MR. MORRIS: All right. So look at
14 the one on the screen.

15 Q. Do you see, Mr. Waterhouse, that
16 this is a promissory note dated May 31st, 2017,
17 in the approximate amount of \$30.7 million?

18 A. Yes.

19 Q. And do you see that the maker of the
20 note is NexPoint?

21 A. Yes.

22 Q. And that Highland is the payee; is
23 that right?

24 A. Yes.

25 Q. Okay. And do you see in Paragraph 2

1 WATERHOUSE - 10-19-21

2 this is an annual installment note?

3 A. Can you scroll down.

4 Q. Sure.

5 MR. MORRIS: Can we scroll down --

6 yeah, there you go.

7 A. Right there, yeah. Yes.

8 MR. MORRIS: And can we scroll down

9 to the signature line.

10 Q. And do you recognize that as

11 Mr. Dondero's signature?

12 A. Yes.

13 Q. And is this the promissory note that

14 we talked about earlier where NexPoint had made

15 certain payments in the aggregate amount of

16 about 6 to \$7 million against principal and

17 interest?

18 A. I don't recall discussing the

19 aggregate principal amounts of 6 to \$7 million,

20 but -- so I don't -- I don't recall that prior

21 discussion with those amounts.

22 Q. All right. Let's take a look.

23 NexPoint always included this promissory note

24 as a liability on its audited financial

25 statements; right?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. And NexPoint had its financial
4 statements audited; isn't that correct?

5 A. Yes.

6 Q. And was the process of NexPoint's
7 audit similar to the process you described
8 earlier for Highland and HCMFA?

9 A. Yes, it is similar.

10 Q. Okay.

11 MR. MORRIS: Can we put up
12 NexPoint's audited financials and let
13 everybody know what exhibit number it is,
14 La Asia?

15 MS. CANTY: It is going to be
16 Exhibit 46.

17 (Exhibit 46 marked.)

18 Q. And do you see, sir, that we've put
19 up NexPoint Advisors' consolidated financial
20 statements and supplemental information for the
21 period ending December 31st, 2019?

22 A. Yes.

23 Q. Did you participate in the process
24 whereby these audited financial statements were
25 issued?

1 WATERHOUSE - 10-19-21

2 A. I didn't participate directly, as
3 I've described before, about the -- the team
4 performing the audit.

5 Q. Do you recall when the audit of
6 NexPoint's financial statements for the period
7 ending December 31st, 2019 was completed?

8 A. Yes.

9 Q. And when do you recall it being
10 completed?

11 A. In January of 2021.

12 Q. Do you know why the 2019 audit
13 report wasn't completed until January of 2021?

14 A. Yes.

15 Q. Why was the NexPoint audit report
16 for the period ending 12/31/19 not completed
17 until January 2021?

18 A. Because we had to deal with working
19 from home from -- with COVID, and on top of all
20 of our daily responsibilities and job duties
21 at -- at providing -- at Highland providing
22 services to NexPoint, we had to do all of this
23 extra work for a bankruptcy that was filed in
24 October of 2019.

25 MR. MORRIS: Can we go to the

1 WATERHOUSE - 10-19-21

2 balance sheet on page 3? Okay. Stop right
3 there.

4 Q. Do you see under the liabilities
5 section, the last item is note payable to
6 affiliate?

7 A. Yes.

8 Q. And is that the note that we just
9 looked at?

10 MS. DANDENEAU: Objection to form.

11 Q. Withdrawn.

12 Is that the approximately
13 \$30 million note that we just looked at that
14 was dated from 2017?

15 MS. DANDENEAU: Objection to form.

16 A. I believe no.

17 Q. Okay. You're not aware of any other
18 note that was outstanding from NexPoint to
19 Highland as of the end of the year 2019, other
20 than that one \$30 million note; right?

21 A. I don't recall.

22 Q. And as of the end of 2019, the
23 principal amount that was due on the note was
24 approximately \$23 million; right?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 A. Approximately.

4 Q. And does that refresh your
5 recollection that between the time the note was
6 executed and the end of 2019, that NexPoint had
7 paid down approximately \$7 million?

8 A. Yes. If we are just doing the math,
9 yes.

10 Q. Okay. Did NexPoint complete its
11 audit from 2020?

12 A. Sorry, you kind of broke up. Do
13 NexPoint complete?

14 Q. The audit of its financial
15 statements for the period ending December 31st,
16 2020?

17 A. No.

18 Q. No, it's not complete?

19 A. No, it is not complete.

20 Q. Did HCMFA complete its audit for the
21 year ending December 31st, 2020?

22 A. No.

23 MR. MORRIS: Can we go to page 15,
24 please, the paragraph at the bottom.

25 Q. Do you see that NexPoint has

1 WATERHOUSE - 10-19-21

2 included under notes payable to Highland a
3 reference to the amounts that were outstanding
4 as of the year-end 2019 under the note that we
5 looked at just a moment ago?

6 A. Yes. Are you talking about the
7 second paragraph?

8 Q. I'm actually talking about first
9 paragraph. Do you understand that the first
10 paragraph is a reference to the 2017 note, and
11 the amounts that were -- the principal amount
12 that was outstanding as of the end of 2019?

13 MS. DANDENEAU: Objection to form.

14 John, do you mean the first paragraph of
15 that page?

16 MR. MORRIS: No, the first paragraph
17 under notes payable to Highland.

18 A. Yeah, I see the paragraph, and
19 again, this is what I answered earlier. I
20 believe so, just because I don't -- again, this
21 is a number in a balance sheet, and without
22 matching it up and seeing the detail with the
23 schedule like I kind of talked about for
24 Highland's financial statements, it is a little
25 bit more difficult to tie everything in

1 WATERHOUSE - 10-19-21

2 perfectly together.

3 Q. Okay. But you're not aware of any
4 note that was outstanding at the end of 2019
5 from NexPoint to Highland other than whatever
6 principal was still due and owing under the
7 \$30 million note issued in 2017; correct?

8 A. Well, it -- I don't -- there is
9 reference in the second paragraph. I don't --
10 I don't -- I don't recall what that is
11 referring to, so I don't -- I don't know.

12 Q. Well, if you listen carefully to my
13 question, right, I'm asking about notes that
14 were outstanding at the end of 2019, and if we
15 look at the paragraph you just referred to, it
16 says that during the year there were new notes
17 issued totaling \$1.5 million, but by the end of
18 the year, no principal or interest was
19 outstanding on the notes.

20 Do you see that?

21 A. Oh, I do, yes.

22 Q. So does that refresh your
23 recollection that there were no notes
24 outstanding from NexPoint to Highland other
25 than the principal remaining under the original

1 WATERHOUSE - 10-19-21

2 \$30 million 2017 note that we looked at a
3 moment ago?

4 A. Well, we're at the bottom of the
5 page. Is there anything on page 16?

6 Q. That is a fair question, sure. That
7 is it.

8 A. Okay. So it appears that that is
9 the only note that is detailed in the notes in
10 the financial statement.

11 Q. And you don't have any memory of any
12 other note other than the 2017 note, right,
13 being outstanding as of the end of the year?

14 A. I deal with thousands of
15 transactions every year. I don't really have a
16 very specific memory for what exactly was
17 outstanding.

18 MR. MORRIS: Why don't we take a
19 break now. We've been going for a little
20 while. It's 3:26. Let's come back at
21 3:40.

22 VIDEOGRAPHER: We're going off the
23 record at 3:26 p.m.

24 (Recess taken 3:26 p.m. to 3:39 p.m.)

25 VIDEOGRAPHER: We are going back on

1 WATERHOUSE - 10-19-21

2 the record at 3:39 p.m.

3 Q. All right. Mr. Waterhouse, we -- I
4 don't think we have a lot more here.

5 To the best of your knowledge and
6 recollection, were all affiliate loans and all
7 loans made to Mr. Dondero recorded on
8 Highland's books and records as assets of
9 Highland?

10 MS. DANDENEAU: Object to the form,
11 asked and answered.

12 A. To my knowledge, yes.

13 Q. Okay. Can you recall any loan to
14 any affiliate or Mr. Dondero that was not
15 recorded on Highland's books and records as an
16 asset?

17 A. Like during my time as CFO? I don't
18 recall.

19 Q. How about after the time that you
20 were CFO? Did you recall that there was a loan
21 by Highland to an affiliate or to Mr. Dondero
22 that hadn't been previously recorded on
23 Highland's books as an asset?

24 MS. DANDENEAU: Objection to form.

25 A. I guess I don't understand the

1 WATERHOUSE - 10-19-21

2 question. I left Highland as of -- I'm not
3 aware of -- I left Highland in February --
4 probably the last day of February of 2021.

5 Q. Okay.

6 A. I'm not -- I'm not aware of any --
7 I'm not aware of anything past that date.

8 Q. Okay. While you were the CFO at
9 Highland, did Highland prepare in the ordinary
10 course of business a document that reported
11 operating results on a monthly basis?

12 A. Yes.

13 Q. And are you generally familiar with
14 the monthly operating reports?

15 A. Yeah. You are referring to the
16 reports that we filed to the Court every month?

17 Q. I apologize, I'm not. I'm taking
18 you back to the pre-petition period. There was
19 a report that I have seen that I'm going to
20 show you, but I'm just asking for your
21 knowledge.

22 MR. MORRIS: Let's put it up on the
23 screen, Exhibit 39.

24 (Exhibit 39 marked.)

25 Q. Do you see this is a document that

1 WATERHOUSE - 10-19-21

2 is called operating results?

3 A. Yeah, that's the title of it.

4 Q. Okay. And was a report of operating
5 results prepared by Highland on a monthly basis
6 during the time that you served as CFO?

7 A. No.

8 Q. Are you familiar with a document of
9 this type? And we can certainly look at the
10 next page or two to refresh your recollection.

11 A. I'm just looking at the title. I
12 don't really -- again, as I discussed before, I
13 don't have any records or documents or emails
14 or appointments or anything that I was able to
15 use prior to -- prior to this deposition, so
16 I'm doing the best I can.

17 Q. Okay. You don't need to apologize.
18 I'm just asking you if you are familiar with
19 the document called Operating Results that was
20 prepared on a monthly basis at Highland?

21 MS. DEITSCH-PEREZ: Object to the
22 form.

23 Q. If you're not, you're not.

24 A. I don't believe this was prepared on
25 a monthly basis.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you see that this one
3 is -- is dated February 2018?

4 A. Yes.

5 Q. Do you have -- do you believe --
6 have you ever seen a document that was
7 purporting to report operating results for
8 Highland?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 Q. Okay. And when you say that you
12 don't believe it was produced on a monthly
13 basis, was it produced on any periodic bases to
14 the best of your recollection?

15 A. I believe it was -- it was prepared
16 on an annual basis.

17 Q. Okay.

18 MR. MORRIS: Can we look at the next
19 page.

20 Q. Do you see that there is a statement
21 here called: Significant items impacting
22 HCMLP's balance sheet?

23 And it is dated February 2018.

24 A. Yes.

25 Q. Do you recall that there was a

1 WATERHOUSE - 10-19-21

2 report that Highland prepared that identified
3 significant items impacting the balance sheet?

4 A. A report that was prepared.

5 Q. Let me ask a better question: Did
6 Highland prepare reports to the best of your
7 recollection that identified significant items
8 that impacted its balance sheet?

9 A. Well, so Highland prepared a -- a
10 monthly close package. And maybe I'm
11 getting -- and -- and maybe change names at one
12 time or maybe I'm just -- again, just
13 misremembering -- but in that, yes, there is a
14 page that would detail just changes in -- you
15 know, just changes month over month on the
16 balance sheet.

17 Q. Okay. And maybe it is my fault.
18 Maybe I didn't know the proper name for it.
19 But let's use the phrase "monthly close
20 package."

21 Did Highland prepare a monthly close
22 package in the ordinary course of business
23 during the time that you served as CFO?

24 MS. DANDENEAU: Objection to form.

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. And did the monthly close package
3 that Highland prepared include information
4 concerning significant items that impacted
5 Highland's balance sheet?

6 A. Yes, it had a page like that is --
7 that is on the screen that detailed items
8 like -- of that nature.

9 Q. And do you know who -- was there
10 anybody at Highland who was responsible for
11 overseeing the preparation of the monthly
12 reporting package?

13 A. That would have been -- again, it
14 varies over time during my tenure as CFO.
15 It -- it varied over -- over time, but -- but
16 typically a -- a corporate accounting manager.

17 Q. And who were the corporate
18 accounting managers during your tenure as CFO?

19 A. It would have been Dave Klos and
20 Kristin Hendrix.

21 Q. And did the corporate accounting
22 manager deliver to you drafts of the monthly
23 close package before it was finalized?

24 A. Sometimes.

25 Q. Was that the practice even if there

1 WATERHOUSE - 10-19-21

2 were exceptions to the practice?

3 A. The practice meaning that they
4 sometimes lured them to me?

5 Q. That that was the expectation even
6 if circumstances prevented that from happening
7 from time to time.

8 MS. DEITSCH-PEREZ: Object to the
9 form.

10 A. I -- I would say it started out that
11 way but over the years it -- it was not
12 enforced.

13 Q. Okay. So you were -- you reviewed
14 and approved monthly -- monthly reporting
15 packages for a certain period of time and then
16 over time you stopped doing that.

17 Do I have that right?

18 MS. DANDENEAU: Objection to form.

19 A. Yes, I mean, if you're talking about
20 a formal meeting where we sit down and go
21 through and approve it. I would say that was
22 standard practice a decade -- you know, early
23 on. And as time went on that -- that -- that
24 practice wasn't followed.

25 Q. Okay.

1 WATERHOUSE - 10-19-21

2 A. And, quite frankly, I don't even
3 know if these were -- these were sent to me
4 even in any capacity.

5 Q. What was the purpose of preparing
6 the monthly reporting package -- withdrawn.

7 What was the purpose of preparing
8 the monthly close package?

9 MS. DEITSCH-PEREZ: Object to the
10 form.

11 A. The -- the original purpose was so
12 that it would just -- it would be a report that
13 was reviewed monthly with senior management.

14 Q. Who was included in the idea of
15 senior management?

16 A. You know, I think originally when
17 this was conceived that would have been like
18 Jim Dondero and Mark Okada.

19 Q. Were monthly reporting -- withdrawn.

20 Were monthly close packages prepared
21 to the best of your knowledge until the time
22 you left Highland?

23 A. To my knowledge -- I don't know,
24 actually. I mean, to my knowledge, I believe
25 it was being -- that was still being done. I

1 WATERHOUSE - 10-19-21

2 don't know because, again, I wasn't reviewing
3 them. I hadn't reviewed a close package for --
4 for a long time. But I believe the standard
5 practice that was still being carried out.

6 Q. Did you ever have any discussions
7 with the debtor's independent board concerning
8 any promissory notes that were issued by any of
9 the affiliates or Mr. Dondero?

10 A. I can't -- I can't -- I can't recall
11 specifically.

12 Q. Did you speak with the independent
13 board from time to time?

14 A. Yes, from -- from -- from time to
15 time I had discussions with the independent
16 board members, you know, either -- either, you
17 know, by themselves or wholly, you know, as --
18 as a -- as a combined work.

19 Q. Okay. Before we talk about
20 Mr. Seery, do you recall ever having a
21 conversation with Mr. Nelms or Mr. Dubel
22 concerning any promissory note that was
23 rendered by one of the affiliates or
24 Mr. Dondero to Highland?

25 A. I don't recall any conversations

1 WATERHOUSE - 10-19-21

2 specifically.

3 Q. Do you know if the topic was ever
4 discussed, even if you don't remember it
5 specifically?

6 MS. DANDENEAU: Objection to form.

7 A. It -- it -- it may have. I don't
8 know. I don't recall.

9 Q. Do you recall ever discussing any
10 promissory note issued by any of the affiliates
11 or Mr. Dondero with James Seery?

12 A. I don't -- I don't recall
13 specifically.

14 Q. Do you recall generally ever
15 discussing the topic of promissory notes issued
16 by any of the affiliates or Mr. Dondero to
17 Highland with Mr. Seery?

18 A. Nothing -- nothing is really jumping
19 out at me.

20 Q. Do you recall if you ever told
21 Mr. Seery that any of the affiliates or
22 Mr. Dondero didn't have an obligation to pay
23 all amounts due and owing under their notes?

24 A. I don't recall having that
25 conversation.

1 WATERHOUSE - 10-19-21

2 Q. Did you ever tell Mr. Seery that you
3 had any reason to believe that the amounts
4 reflected in the notes issued by the affiliates
5 and Mr. Dondero were invalid for any reason?

6 A. I don't -- I don't recall.

7 Q. Did you tell Mr. Dondero -- did you
8 tell Mr. Seery that you thought the promissory
9 notes issued by the advisors and Mr. Dondero
10 that were outstanding as of the petition date
11 were assets of the estate?

12 A. I don't recall having a specific
13 conversation about those -- you know, those
14 notes outstanding as -- as of the petition date
15 being assets on the estate. I mean, we put
16 together -- you know, they're in the books and
17 records of the financial statements. I don't
18 recall having a specific conversation.

19 Q. Did you ever prepare any documents
20 that were delivered to Mr. Seery that concerned
21 the promissory notes issued by any of the
22 affiliates or Mr. Dondero?

23 MS. DANDENEAU: Objection to form.

24 A. Did I produce any that concerned --
25 you mean did I just -- did I give Mr. Seery

1 WATERHOUSE - 10-19-21

2 anything that -- that said I have concerns over
3 these notes?

4 Q. No. Let me try again. Maybe it was
5 my question.

6 Did you ever give Mr. Seery any
7 information concerning any of the notes that
8 were issued by any of the affiliates or
9 Mr. Dondero?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall if I did or not. I
12 don't -- I don't remember. I mean, you have my
13 emails. You may have asked. Again, I don't --
14 I don't know.

15 MR. MORRIS: Can we put up the
16 document that has been premarked as Exhibit
17 39?

18 MS. DANDENEAU: John, that is this
19 document, isn't it?

20 MR. MORRIS: Oh, yeah, it might be,
21 as a matter of fact. Let's go to Number
22 40.

23 (Exhibit 40 marked.)

24 Q. During the bankruptcy,
25 Mr. Waterhouse, did you prepare documents that

1 WATERHOUSE - 10-19-21

2 were filed with the bankruptcy court?

3 A. I didn't -- I didn't prepare them
4 personally.

5 Q. Did people prepare them under your
6 direction?

7 A. Yes. There were members of the team
8 that prepared them, and they worked in -- you
9 know, there were members of DSI that were
10 involved in the process as well.

11 Q. To the best of your knowledge, did
12 DSI rely on the employees of Highland for the
13 information that they used to prepare the
14 bankruptcy filings?

15 A. Yes. The books and records were
16 with the Highland personnel.

17 Q. Okay. And do you see on the screen
18 here, there is a document that we have marked
19 as Exhibit 40 that is -- that is titled Summary
20 of Assets and Liabilities?

21 A. Uh-huh.

22 Q. Okay. And do you recall reviewing
23 any summary of assets and liabilities before it
24 was filed with the bankruptcy court?

25 A. Yes, I recall reviewing this at a

1 WATERHOUSE - 10-19-21

2 high level.

3 Q. And did you believe that it was
4 accurate at the time it was filed?

5 A. I didn't have any other reason to
6 believe otherwise.

7 Q. Okay. Do you see that the total
8 value of all properties listed in Part 1 is
9 approximately \$410 million?

10 MS. DEITSCH-PEREZ: Objection to
11 form.

12 A. Yes, it is in 1c.

13 Q. Yes.

14 A. Yes, I see that.

15 Q. Okay. If we go to the second page,
16 now I think I may just have excerpts here, just
17 so everybody is clear, but if we scroll down to
18 the second page, you will see that there is
19 a -- a little further. There you go. You will
20 see there is a reference to Item 71, notes
21 receivable.

22 Do you see that?

23 A. I do.

24 Q. And that was a reference to the
25 notes receivable from the affiliates and

1 WATERHOUSE - 10-19-21

2 Mr. Dondero, among others; is that right?

3 MS. DANDENEAU: Objection to form.

4 A. Yes. The affiliate notes and the
5 Dondero notes were in this amount, but they
6 weren't -- again, like you said, and among
7 others.

8 Q. Okay. We will look at the
9 specificity because I'm not playing gaming
10 here, but do you know if the \$150 million of
11 notes receivable was included within the
12 \$410 million of total value of the debtor's
13 assets?

14 MS. DANDENEAU: Objection to form.

15 A. I -- I -- I believe so.

16 Q. Right. And so is it fair to say
17 that as of the date this document was prepared,
18 the notes receivable were more than one-third
19 of the value of the debtor's assets?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 MS. DANDENEAU: Object to the form.

23 A. Again, if you are just taking the
24 math, 150 divided by whatever the \$400 million
25 number is above, then yes, you get there.

1 WATERHOUSE - 10-19-21

2 Q. Okay.

3 A. You know, but as of the time of this
4 filing, that is what was put in this filing,
5 right, but, you know, I mean, numbers --
6 numbers change, facts and circumstances change.

7 Q. But as the CFO of Highland, the
8 debtor in bankruptcy, did you believe that this
9 number accurately reflected the total amount
10 due under the notes receivable?

11 A. That is what we had in our books and
12 records.

13 Q. Okay. And did you believe as the
14 CFO that the books and records accurately
15 reported the then value of the debtor's assets?

16 MS. DANDENEAU: Objection to form.

17 A. We didn't -- as part of this filing,
18 there was no fair value measurement or
19 anything. These were just accounting entries
20 for the promissory notes. There is no analysis
21 for impairment or fair market value adjustments
22 or anything of that nature. This is purely
23 taking numbers and putting them in our form.

24 Q. Did you do any impairment analysis
25 at any time while you were employed by

1 WATERHOUSE - 10-19-21

2 Highland?

3 A. Yes, we did do impairment analysis
4 on -- on assets.

5 Q. Okay. Did you ever do an impairment
6 analysis on any of the promissory notes that
7 were given to Highland by any of the affiliates
8 or Mr. Dondero?

9 A. Not that I recall.

10 Q. Under what circumstances do you
11 prepare impairment analyses?

12 A. As -- as -- if you're preparing
13 financials in accordance with GAAP, generally
14 accepted accounting principles, if you're
15 preparing full GAAP financials, you should be
16 preparing -- you should be undergoing on a
17 periodic basis any fair market value
18 adjustments to assets.

19 As I was instructed at the time of
20 the petition date, we weren't producing GAAP
21 financials. So this wasn't something I was
22 worried about nor concerned about.

23 Q. Okay. Were NexPoint and HCMFA and
24 Highland's audited financial statements
25 prepared in accordance with GAAP?

1 WATERHOUSE - 10-19-21

2 A. The audited financials -- yes,
3 audited financial statements are prepared in
4 accordance with GAAP.

5 Q. Do you recall whether any of
6 Highland or HCMFA or NexPoint ever made a fair
7 market value adjustment to any of the notes
8 issued by any of the affiliates or Mr. Dondero
9 to Highland?

10 A. I do not recall that happening, but
11 the -- it is because under -- under GAAP,
12 the -- the treatment of liabilities is
13 different than assets.

14 Q. Okay. So then let's just focus on
15 Highland's audited financial statements.

16 The last audited financial
17 statements were for the period ending December
18 31st, 2018; correct?

19 A. That is my understanding.

20 Q. And you had -- you had an obligation
21 to disclose anything to PricewaterhouseCoopers
22 concerning any subsequent events between the
23 end of 2018 and June 3rd, 2019; correct?

24 MS. DANDENEAU: Objection to form.

25 MS. DEITSCH-PEREZ: Form.

1 WATERHOUSE - 10-19-21

2 A. Correct.

3 Q. Okay. To the best of your
4 knowledge, as Highland's CFO, did Highland ever
5 make any fair market value adjustments to any
6 of the promissory notes that were carried on
7 its balance sheet and that were issued by any
8 of the affiliates or Mr. Dondero?

9 A. I think I answered that question
10 earlier. I don't recall doing that for any of
11 the -- those -- those notes. So it would have
12 included the audit for the -- for the 2018
13 period.

14 Q. Okay.

15 MR. MORRIS: Can we go to the next
16 page.

17 Q. Do you see this is a note a list of
18 notes receivable? Do you see that?

19 A. Yes, I do.

20 Q. And do you see that this ties into
21 the page that we were just looking?

22 A. I'm sorry, can we go back to the
23 prior page? I mean, it was at 150,331,222. It
24 was on the prior page. Next page. Yes, it
25 agrees.

1 WATERHOUSE - 10-19-21

2 Q. Okay. So now let's look at that
3 schedule. So this was the face amount of all
4 of the promissory notes that Highland held at
5 the time this document was filed with the
6 bankruptcy court; right?

7 A. Yes.

8 Q. There is a footnote there that says,
9 doubtful or uncollectible accounts are
10 evaluated at year-end.

11 Do you see that?

12 A. I do.

13 Q. Okay. And is it fair to say that as
14 of the year-end 2018, the year before this,
15 that to the extent any of these notes were
16 outstanding at that time, they weren't deemed
17 to be doubtful or uncollectible?

18 A. Yeah. For the 2018 audit, there
19 weren't any -- there weren't any adjustments to
20 fair value.

21 Q. Okay. And during the bankruptcy, do
22 you recall that Highland subsequently reserved
23 for the Hunter Mountain Investment Trust note?

24 A. Yes.

25 Q. Why did Highland -- were you

1 WATERHOUSE - 10-19-21

2 involved in the decision to reserve the Hunter
3 Mountain Investment Trust note?

4 A. I was not.

5 Q. Do you know why Highland decided to
6 reserve for the Hunter Mountain Investment
7 Trust note?

8 A. I don't know yet decision was made.
9 I believe it was made by someone at DSI.

10 Q. Okay. I'm just asking if you know
11 why.

12 Did you ever ask anyone why they
13 reserved for that particular note?

14 A. I don't recall.

15 Q. Do you know whether the debtor
16 reserved for any other note on this list during
17 the bankruptcy?

18 A. Again, I don't recall. I wasn't
19 part of any process of -- again, like any fair
20 value adjustments or anything to that degree.
21 Like I said, a lot of that was done by DSI and
22 it was kind of out of our court.

23 Q. Okay. Do you know if any note
24 receivable on this list was ever deemed by the
25 debtor to be doubtful or uncollectible?

1 WATERHOUSE - 10-19-21

2 A. I don't -- I don't have a
3 recollection of every filing, so I don't know.

4 Q. Did you ever have a discussion with
5 anybody at any time about whether any of the
6 notes receivable on this list should be deemed
7 to be doubtful or uncollectible?

8 A. No. As I previously stated, we were
9 told we didn't have to keep GAAP financials.
10 We weren't having -- you know, there is no
11 underlying audits being performed, so I mean,
12 it wasn't something I worried about.

13 MR. MORRIS: I move to strike.

14 Q. Did you ever have a conversation
15 with anybody about any of the notes receivable
16 and whether they should be deemed to be
17 doubtful or uncollectible? Did you have the
18 conversation, yes or no?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall.

21 Q. Do you recall ever telling anybody
22 that you believed any of the notes receivable
23 on this list should be doubtful -- should be
24 deemed to be doubtful or uncollectible?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 A. I don't recall. I mean, it may have
3 happened, you know, again, when we initially
4 getting DSI up to speed and going through
5 financials, it may have happened, but I don't
6 recall specifically.

7 Q. While you were the CFO of Highland
8 during the time that the company was in
9 bankruptcy, did you have any reason to believe
10 that any of the notes receivable on this list
11 other than Hunter Mountain Investment Trust
12 should have been characterized as doubtful or
13 uncollectible?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Form.

16 A. I didn't know. I didn't form an
17 opinion. Bankruptcy was new to me. It still
18 is new to me, even after going through this.
19 So I really didn't know what to expect nor
20 really -- you know, I didn't know.

21 MR. MORRIS: I move to strike.

22 Q. During the period of Highland's
23 bankruptcy when you were serving as CFO, did
24 you have any reason to believe any of the notes
25 on this list were doubtful or uncollectible?

1 WATERHOUSE - 10-19-21

2 MS. DEITSCH-PEREZ: This is like the
3 fifth time you've asked it. Object to the
4 form.

5 MR. MORRIS: I'm moving to strike,
6 if you haven't noticed, because he's not
7 answering the question.

8 MS. DEITSCH-PEREZ: He was answering
9 the question, you just didn't like it, like
10 the answer.

11 MR. MORRIS: Good Lord.

12 Q. Go ahead, Mr. Waterhouse.

13 A. Again, I don't -- we brought up a
14 myriad of issues at the start of the bankruptcy
15 case. I don't recall if this was one of them,
16 but, again, there are a lot of things we
17 couldn't change. Even, you know, I was told
18 status quo, blah, blah, blah, right, there is a
19 stay, you can't -- you know, I don't recall
20 specifically, but that doesn't mean it didn't
21 happen.

22 MR. MORRIS: I move to strike.

23 Q. During the time that Highland was in
24 bankruptcy and you served as CFO, did you have
25 any reason to believe that any of the notes

1 WATERHOUSE - 10-19-21

2 receivable on this list were doubtful or
3 uncollectible?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. Potentially.

7 Q. Did you ever tell anybody that?

8 A. As I just stated like five times,
9 yes, we -- at the beginning after filing and we
10 were getting DSI and others up to speed, you
11 know, we had a myriad of discussions of a lot
12 of things and this was likely one of them. I
13 don't -- but I don't recall specifically we
14 talked --

15 Q. I don't want to know -- I don't want
16 to know what was --

17 MS. DEITSCH-PEREZ: Wait, wait.

18 Excuse me. Mr. Morris, you did not let him
19 finish his answer.

20 A. I spoke -- we had -- we were
21 bringing Fred Karesa and Brad Sharp (phonetic)
22 up to speed on all of these items, contracts,
23 and investments and going through -- we had
24 hours and hours and hours of discussion. And
25 then not only do I have to repeat this not

1 WATERHOUSE - 10-19-21

2 once, twice, three, four times with -- you
3 know, I mean, we -- I don't -- I don't remember
4 the sum culmination of all these discussions.
5 They all kind of blend together.

6 MR. MORRIS: Okay. I move to strike
7 and I will try one more time.

8 Q. Did you ever tell anybody at DSI
9 that you believed any of the notes receivable
10 on this list were doubtful or uncollectible?

11 MS. DANDENEAU: Object to form.

12 A. Potentially.

13 Q. Potentially you told them or
14 potentially they were doubtful or
15 uncollectible?

16 A. Potentially I told them that we
17 needed to look at the value of these -- of
18 these assets.

19 Q. Okay. Did you -- okay. It is
20 potential that you told them and it is
21 potentially that you didn't; right?

22 MS. DANDENEAU: Objection to form.

23 A. I've gone through that. I don't
24 recall specifically.

25 Q. So you should just -- I don't want

1 WATERHOUSE - 10-19-21

2 to tell what you to do. Do you have --

3 MS. DANDENEAU: Good.

4 Q. Other than -- other than telling
5 them that they should look at the values, do
6 you have any recollection whatsoever of ever
7 having told anybody at DSI that any of the
8 notes receivable on this page were doubtful or
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 MS. DANDENEAU: Objection.

13 A. I recall having general discussions
14 about everything on our balance sheet which
15 would have included these -- these notes
16 receivable.

17 Q. Okay.

18 A. I don't recall specifically where
19 those discussions delved into.

20 Q. Do you recall any discussion at all
21 on the topic of whether any of these notes on
22 this list were doubtful or uncollectible?

23 MR. AIGEN: Mr. Morris, how on earth
24 is that question different from the
25 question that you just asked for the last

1 WATERHOUSE - 10-19-21

2 five times? I mean, really I thought you
3 were -- (overspeak.)

4 MR. MORRIS: Because he never
5 answered it.

6 MS. DEITSCH-PEREZ: Are you
7 listening to him?

8 MR. MORRIS: You know --

9 MS. DEITSCH-PEREZ: He basically
10 said that he had a conversation with DSI
11 that went over all of this stuff and that
12 conversation could have included the notes
13 but he doesn't recall specifically.

14 What more do you want him -- to ask
15 of him?

16 MR. MORRIS: I want him -- I would
17 love him to say -- I would like him to
18 testify to the truth, and that is he has no
19 recollection.

20 MS. DEITSCH-PEREZ: Well, the truth
21 as you would like to see it, but -- but he
22 is testifying truthfully. And I -- and, by
23 the way, I move to strike that comment --

24 MR. MORRIS: Okay.

25 MS. DEITSCH-PEREZ: -- because it

1 WATERHOUSE - 10-19-21

2 suggests that he has not testified
3 truthfully.

4 MR. MORRIS: I will ask my question
5 again. And if at any time you want to
6 direct him not to answer, that is your
7 prerogative.

8 Q. Mr. Waterhouse, do you have any
9 recollection at all of ever telling anybody
10 from DSI that any of these notes were doubtful
11 or uncollectible?

12 MS. DANDENEAU: Object to form.

13 A. I don't remember specifically.

14 Q. Do you remember generally that
15 specific topic?

16 A. We generally talked about assets,
17 values. If -- we had discussions of that and
18 collectability in nature. I mean, of Highland,
19 the funds, the CLOs, the entire complex. We
20 had discussions like that, which is, you know,
21 as you look at a billion dollar consolidated
22 balance sheet.

23 So I generally remember -- this is
24 billions of dollars, including these assets --
25 having discussions of this -- of this type.

1 WATERHOUSE - 10-19-21

2 Q. Do you believe that an affiliate
3 loan on this list was doubtful or
4 uncollectible? Would you have told that to
5 DSI?

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Object to form.

8 A. If we had, like -- again, if we --
9 if -- if we weren't preparing financial
10 statements in accordance with GAAP, and -- you
11 know, if DSI at that point -- they were --
12 again, I was new to bankruptcy.

13 The CRO is -- we are delegating
14 everything to the CRO. All the decisionmaking.
15 Remember -- remember when you and I went into
16 Delaware Court and we were saying DSI basically
17 does everything, remember this, Mr. Morris?

18 You were my counsel at the time, and
19 basically we're running everything through DSI.
20 That was what this was like in the early part.

21 Everything was communicated through
22 DSI. So DSI says this. DSI says that. That
23 is what we're doing, and we're pointing out
24 things to them.

25 Now, they decide what direction this

1 WATERHOUSE - 10-19-21

2 goes.

3 Q. Did you point out that any of
4 these --

5 A. I don't recall specifically.

6 Q. Okay. At any time that you served
7 as Highland's CFO, did you ever point out to
8 DSI that any of these loans were doubtful or
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the
11 form.

12 MS. DANDENEAU: Objection.

13 A. If you're asking me if I had a
14 conversation with DSI, if any of these loans
15 were doubtful or uncollectible, I don't recall
16 specifically.

17 Q. Do you recall that the debtor filed
18 on the docket monthly operating reports?

19 A. Yes.

20 Q. You prepared those personally,
21 didn't you?

22 MS. DEITSCH-PEREZ: Objection to
23 form.

24 A. I didn't personally prepare them,
25 the team did with DSI.

1 WATERHOUSE - 10-19-21

2 Q. But you signed them; correct?

3 A. My signature is on the MORs.

4 Q. And you signed them as the preparer
5 of the document; correct?

6 A. Yes, I did this pursuant to DSI's
7 instructions.

8 Q. Okay. You wouldn't have signed the
9 document if you didn't believe it to be
10 accurate; correct?

11 A. If I had reason to believe it
12 wasn't, presumably I wouldn't have signed it.

13 Q. Okay. And do you have any reason to
14 believe right now that any monthly operating
15 report that has your signature on it was
16 inaccurate in any way?

17 MS. DEITSCH-PEREZ: Object to the
18 form.

19 A. My understanding of the monthly
20 operating reports is we were filing them in
21 accordance with the standards set by the Court.
22 It wasn't -- you know, again, I don't -- you
23 know, it wasn't GAAP. It wasn't these other
24 standards, so I testified I didn't have
25 experience in this. The CRO was running the

1 WATERHOUSE - 10-19-21

2 show. I followed their advice.

3 Q. But you assured yourself that
4 everything in the report was accurate before
5 you signed them; correct?

6 MS. DANDENEAU: Objection to form.

7 A. I trusted the guidance from the CRO
8 and their team and their experience and their
9 guidance for doing this for many, many, many
10 years to -- to -- to categorize and put things
11 in ways on the form.

12 You know, my team had -- had not
13 filled out these forms before and needed all of
14 this guidance. I'm not an expert in this. I
15 have oversight of it. I signed the form. DSI
16 told me to.

17 Q. And you and your team are the source
18 of the information that DSI used to create the
19 reports; correct?

20 MS. DANDENEAU: Objection to form.

21 A. The books and records reside with
22 the -- with -- with the corporate accounting
23 team.

24 Q. Okay. And the corporate accounting
25 team was the corporate accounting team that was

1 WATERHOUSE - 10-19-21

2 under your direction; correct?

3 A. Yes.

4 Q. So -- so your team was responsible
5 for maintaining Highland's books and records;
6 correct?

7 A. I'm sorry, my team was responsible?

8 Q. Correct.

9 A. Yes. They -- they -- they were
10 the -- the -- the general ledger of Highland,
11 that responsibility was with the corporate
12 accounting team.

13 Q. The corporate accounting group
14 reported to you; correct?

15 A. Yes.

16 MR. MORRIS: Can we put up 41,
17 please.

18 (Exhibit 41 marked.)

19 Q. All right. You will see that this
20 is a report that is dated January 31st, 2020,
21 but it is for the month ending December 2019.

22 Do you see that?

23 A. I do.

24 Q. And you signed this report in your
25 capacity as the chief financial officer of

1 WATERHOUSE - 10-19-21

2 Highland; correct?

3 A. Yes.

4 Q. And you're the preparer -- you're
5 identified as the preparer of the report;
6 correct?

7 A. That is correct.

8 Q. Do you recall participating in the
9 preparation of monthly operating reports?

10 A. As I testified earlier, it was put
11 together, you know, with the team. The team
12 worked with DSI to put these monthly operating
13 reports together. We had no experience at this
14 time of the monthly operating reports or things
15 of this nature.

16 MR. MORRIS: Can you turn to the
17 next page, please.

18 Q. Do you see a line item under assets
19 due from affiliates?

20 A. Yes, I do.

21 Q. Okay. And to the best of your
22 knowledge and understanding, as the person who
23 is identified as the preparer of this report,
24 does that line item include the affiliate loans
25 that we've been talking about?

1 WATERHOUSE - 10-19-21

2 A. Again, I would have to see, just
3 like we did with the financial statements of
4 Highland and NexPoint, I would have to see a
5 detailed build, but, you know, if you look at
6 the other line items, you know, the only other
7 place it could be would be in -- in other
8 assets.

9 Q. Okay. And as a matter of
10 arithmetic, is it fair to say that is the value
11 of the assets due from affiliates was more than
12 25 percent of the value of Highland's total
13 assets as of 12/31/2019?

14 MS. DANDENEAU: Objection to form.

15 A. I'm really not doing the mental math
16 right now, so I've been going at this depo for
17 hours, so I'm really not -- you know --

18 Q. All right. No problem.

19 A. -- these are millions of dollars.

20 Q. Let's look at the Footnote 1,
21 please. Do you see there is a reference to the
22 Hunter Mountain note?

23 A. Yes, I see that in Footnote 1.

24 Q. Okay. And that's the reserve that
25 was taken against that note?

1 WATERHOUSE - 10-19-21

2 A. Yes, that is what this indicates.

3 Q. Okay. And were you aware that the
4 reserve was being taken on that it was?

5 A. I was -- I was aware, yeah, at some
6 point, yes.

7 Q. Okay. And are you aware of any
8 reserve being taken with respect to any other
9 note that was issued in favor of Highland?

10 A. Again, as I testified, we didn't go
11 through an analysis on -- on -- on the other
12 notes.

13 Q. Can we turn --

14 A. I believe -- I believe it says that
15 in Footnote 1, fair value has not been
16 determined with respect to any of the notes.

17 So this footnote -- footnotes, look,
18 there has been no determination.

19 Q. Okay. The determination was made in
20 the audited financial statements just six
21 months earlier; right? We saw that earlier?

22 A. That was as of 12/31/18. I mean,
23 things -- circumstances -- there's a bank --
24 circumstances change, things change -- things
25 change over time, you know, facts and

1 WATERHOUSE - 10-19-21

2 circumstances change. Again, you have to do an
3 analysis.

4 Q. Okay. And you do recall that in
5 Highland's 2018 financial statement, all of the
6 notes issued by affiliates and Mr. Dondero that
7 were due at year-end had a fair value equal to
8 the carrying value; correct? We looked at
9 that?

10 A. Yes. That was in the -- in the
11 disclosure for the -- for the affiliate notes,
12 yes.

13 Q. And -- and you were obligated to
14 share with PwC any subsequent events between
15 the end of 2018 and the date that you signed
16 your management representation letter on June
17 3rd, 2019; correct?

18 MS. DEITSCH-PEREZ: Object to the
19 form.

20 A. Yes. I -- I -- I signed the
21 management, you know, my signature is in the
22 management representation letter -- I hope I'm
23 answering your question -- that is dated in
24 June with the representations made in that
25 management representation letter.

1 WATERHOUSE - 10-19-21

2 Q. Okay. And there was nothing that
3 caused PricewaterhouseCoopers to include in
4 subsequent events any adjustment to the
5 conclusion that the fair value of the affiliate
6 notes and the notes issued by Mr. Dondero
7 equaled the carrying value; correct?

8 MS. DANDENEAU: Objection to the
9 form.

10 A. That is correct. That is what was
11 in the -- in the -- in the footnotes.

12 Q. Okay. So are you aware of anything
13 that occurred between June 3rd, 2019 and
14 December 31st, 2019 that would have caused the
15 fair value of the notes to differ from the
16 carrying value?

17 A. Yeah. Highland filed for
18 bankruptcy, things changed -- I mean, there was
19 a bankruptcy filed in October of -- of -- of
20 2019, right, the petition date that we've
21 described earlier.

22 I mean, I had a -- I guess looking
23 back naively, I thought we were going to get an
24 audit from PwC for year-ended 2019, and when we
25 had discussions with PwC, they were like, are

1 WATERHOUSE - 10-19-21

2 you crazy, we're not auditing this. Values
3 change, all these things change, bankruptcy
4 changes the entire scenario. I mean -- and
5 they're like, we're not -- we're not touching
6 this.

7 And so, you know, I was like, okay,
8 sorry, I get it, okay, no an audit.

9 I mean, it is -- you know, and --
10 you know, and we weren't preparing GAAP
11 financial statements.

12 Again, I didn't know what we were
13 doing in relation to our financial statements,
14 but these were the discussions I was having at
15 the time. And yeah, I mean, filing bankruptcy
16 from what I got from outside auditors and
17 others involved changed things dramatically.

18 Q. Okay. Highland wasn't the obligor
19 under any of the notes that we're talking
20 about; correct?

21 A. No.

22 Q. So --

23 A. That's right.

24 Q. So can you identify any fact that
25 would cause the fair value to deviate from the

1 WATERHOUSE - 10-19-21

2 carrying value during the seven-month period
3 between June 3rd and the end of the year, 2019?

4 MS. DANDENEAU: Objection to form.

5 A. No. I mean, I'm putting myself back
6 at that time, right. Hindsight is 2020, but we
7 didn't do an analysis, but we would have done a
8 fulsome analysis and looked at all of the facts
9 and circumstances at the time, but asset values
10 change. You know, there could have been a
11 market crash in hindsight in 2020, which --
12 which affected entities' abilities.

13 There could have been all of these
14 things, right, that -- that happen. It is --
15 it is easy to look back in hindsight, but when
16 you are looking at this in -- in realtime, the
17 analysis is different, and again, we didn't do
18 an analysis.

19 Q. Okay. You didn't do an analysis.

20 Do I have that right?

21 A. I don't -- I don't recall doing one
22 or maybe -- you know, I don't recall doing one.

23 MR. MORRIS: Okay. I'm going to

24 take a break. I may be done, so the time
25 now is -- is 4:30 your time. Let's just

1 WATERHOUSE - 10-19-21

2 take a short break until 4:40 your time.

3 MS. DANDENEAU: Okay.

4 VIDEOGRAPHER: We're going off the
5 record, 4:31 p.m.

6 (Recess taken 4:31 p.m. to 4:43 p.m.)

7 VIDEOGRAPHER: We are back on the
8 record at 4:43 p.m.

9 MR. MORRIS: I have no further
10 questions.

11 MR. RUKAVINA: Okay.

12 Mr. Waterhouse, I will go next.

13 EXAMINATION

14 BY MR. RUKAVINA:

15 Q. Sir, my name is Davor Rukavina. I'm
16 the lawyer for --

17 MR. MORRIS: Hey, Davor, just before
18 you begin, I just want to put on the record
19 Highland's objection to documents that were
20 produced to me 10 minutes before the
21 deposition began.

22 MR. RUKAVINA: What the basis of
23 your objection?

24 MR. MORRIS: That they were due
25 quite some time ago, and the fact that you

1 WATERHOUSE - 10-19-21

2 had -- I just think it's appropriate to --
3 to dump documents on somebody 10 minutes
4 before the deposition. I just think
5 that's --

6 MR. RUKAVINA: Well, these are
7 documents Highland produced. I'm not aware
8 of any rule I have to give you advance
9 documents when I know for the record that
10 other than the exhibits that you sent to us
11 last week, most of the exhibits you used
12 today you did not provide to me prior to
13 this deposition.

14 MR. MORRIS: No, but the documents
15 were produced by me in -- in litigation,
16 right?

17 MR. RUKAVINA: I'm going to use
18 primarily, John, the documents that you
19 produced to me today, but you may.

20 MR. MORRIS: Primarily. I've got --
21 I've got my objection. You have got your
22 response. Proceed.

23 Q. Mr. Waterhouse, again, I represent
24 the advisors, HCMFA and NexPoint Advisors.

25 Do you understand that?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. You and I have never met or talked
4 before today, have we?

5 A. No, I have -- I have heard your
6 voice on calls before.

7 Q. Okay.

8 MR. RUKAVINA: Madam Court Reporter,
9 I will use a few exhibits today. My
10 associate, Mr. Nguyen, will find some way
11 to get them to you. I don't know how to do
12 that, but it looks like you guys do.

13 I am going to use numbers as well.
14 But to differentiate them from Mr. Morris
15 we're going to mark mine with the prefix A
16 for advisors.

17 Do you understand?

18 COURT REPORTER: Yes.

19 MR. RUKAVINA: Okay. Perfect.

20 Q. Okay. So, Mr. Waterhouse, let's
21 start with those two HCMFA notes that you were
22 asked about, one for 5 million and one for
23 2.4 million.

24 Do you recall those notes?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Were you ever the CFO of HCMFA?

3 A. I don't recall.

4 Q. So to the best of your recollection,
5 you were still an officer of HCMFA in 2019,
6 just that your title was treasurer?

7 MR. MORRIS: Object to the form of
8 the question. There is no leading here.
9 He works for your client.

10 MS. DANDENEAU: That is not -- that
11 is not true.

12 MR. MORRIS: He's the treasurer --
13 he is the treasurer of your client. I
14 don't -- I'm going to object every time you
15 try to lead, so...

16 MR. RUKAVINA: Totally fine to
17 object.

18 MR. MORRIS: Okay.

19 Q. Please answer my question,
20 Mr. Waterhouse.

21 A. I'm sorry, could you repeat? There
22 was...

23 Q. Yes. You were -- you testified
24 earlier that in 2019 you were an officer of
25 HCMFA; correct?

1 WATERHOUSE - 10-19-21

2 A. Yes, I testified that I was the
3 treasurer and I didn't know if that incumbency
4 certificate, you know, was one that appointed
5 me as a treasurer, but yes.

6 Q. I'm just trying to confirm that
7 sitting here today, to the best of your
8 recollection, at that time you were -- your
9 title was treasurer. It was not chief
10 financial officer.

11 A. I don't recall that being my title.

12 Q. Okay. And in May of 2019, however,
13 I think you testified you were the chief
14 financial officer of the debtor; correct?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes, I was -- yes.

18 Q. Okay. As such, in May of 2019, did
19 you have the authority, to your understanding,
20 to unilaterally loan \$5 million or \$2.4 million
21 to anyone on behalf of the debtor?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Sorry, can you repeat that?

25 Q. Yes. So in your capacity as the

1 WATERHOUSE - 10-19-21

2 chief financial officer of the debtor, Highland
3 Capital Management, L.P., in May of 2019, did
4 you believe that you unilaterally, just Frank
5 Waterhouse, had the authority to loan on behalf
6 of the debtor to anyone \$5 million and
7 \$2.4 million?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. No.

11 Q. Is it because loans of that amount
12 would have had to be approved by someone else?

13 A. Yes.

14 Q. Who in '20 -- in May of 2019, if
15 Highland wanted to loan 5 million or
16 \$2.4 million to someone, what would have been
17 the internal approval procedure?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. If -- if we had loans of that nature
21 that needed to be made due to their size, we
22 would have gotten approval from the -- the
23 president of Highland.

24 Q. And who that was individual?

25 A. It was James Dondero.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Now, I'm going to ask you a
3 similar question but for a different entity.

4 In May of 2019, as the treasurer of
5 HCMFA, did you believe that you unilaterally
6 had the ability to cause HCMFA to become the
7 borrower of a \$5 million loan and a
8 \$2.4 million loan?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. No.

12 Q. What would -- what would the
13 approval have taken place -- strike that.

14 What would the approval process have
15 been like in May of 2019 at HCMFA for HCMFA to
16 take out a \$7.4 million loan?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. The process would have been similar
20 to what we just discussed on -- for Highland to
21 make a loan to others. So, again, you know,
22 we -- we would have -- either myself or someone
23 on the team would have discussed this with
24 the -- the president and owner of -- of HCMFA.

25 Q. And who was that individual?

1 WATERHOUSE - 10-19-21

2 A. That was James -- Jim Dondero.

3 Q. So do I understand that in May of
4 2019, on behalf of both the lender, Highland,
5 and the borrower, HCMFA, Mr. Dondero would have
6 had to approve \$7.4 million in loans?

7 MR. MORRIS: Objection to the form
8 of the question.

9 A. Yes.

10 Q. You mentioned when Mr. Morris was
11 asking you the NAV error, N-A-V error, with
12 respect to TerreStar, without writing us a
13 novel, unless you feel like you have to, can
14 you summarize what that NAV error was? What
15 happened?

16 A. There was a -- in the Highland
17 Global Allocation Fund, it owned at the time an
18 equity interest in a company called TerreStar.
19 And TerreStar is -- at the time was a private
20 company, and it may still be today. Again, I'm
21 putting myself back then as a private company.

22 We had -- sorry, I don't mean we --
23 the fund and the advisor used Houlihan Lokey
24 to -- to value that investment. And during
25 that time there was some trades that were

1 WATERHOUSE - 10-19-21

2 executed at market levels that were much lower
3 than the Houlihan Lokey model.

4 And based on information and
5 discussions with the portfolio managers and,
6 you know, principals that were very familiar
7 with TerreStar, it was determined that those
8 trades were non-orderly and they were not
9 considered in the valuation as consulted with
10 Houlihan Lokey and PricewaterhouseCoopers at
11 the time.

12 Subsequent to a -- I can't remember
13 the exact circumstances of why the SEC got
14 involved. I think it was due to this -- this
15 investment became a material position in the
16 fund. It triggered an SEC, kind of, inquiry.
17 And as part of that inquiry, they questioned
18 the valuation methodology. "They" meaning the
19 SEC.

20 And at the culmination of that
21 process -- this is all summarized -- the value
22 that was -- that ultimately had to be used in
23 the fund's NAV was different than -- materially
24 different than what the original valuation at
25 Houlihan Lokey provided.

1 WATERHOUSE - 10-19-21

2 And given that there was this fund
3 was, as we discussed -- I don't know if we
4 discussed it, but it was an open-ended fund
5 that was going -- that was converting to a
6 close-end fund.

7 Due to the fact that it was an
8 open-ended fund, you had to recalculate NAV and
9 see what the impact was on people -- on
10 investors coming in and out of the fund and if
11 there is a detrimental impact and to calculate
12 what that -- what that impact was and if there
13 was any amounts owed to the fund pursuant to
14 the error.

15 Q. Were you personally involved
16 internally at either Highland or HCMFA with
17 these investigations and discussions with the
18 SEC?

19 A. I was.

20 Q. Which other key people or senior
21 people at Highland were involved, to your
22 recollection?

23 A. Myself, Thomas Surgent, David Klos,
24 Lauren Thedford, Jason Post.

25 Q. Mr. Dondero, was he --

1 WATERHOUSE - 10-19-21

2 A. I believe Cliff Stoops. I'm trying
3 to think. And maybe that is -- that is -- that
4 is -- that is all kind I can recall at the
5 moment.

6 Q. Do you recall whether it was
7 determined that the fund suffered losses as a
8 result of this error?

9 A. The -- the fund -- the -- the --
10 because the open-ended nature of the fund,
11 there were losses that were attributable to
12 investors. Meaning they -- they would have
13 redeemed and got a less money or -- or they
14 subscribed in and maybe because they didn't get
15 enough shares and then they later sold and then
16 they were harmed in that fashion.

17 And there is -- there is -- there
18 were very -- there were very detailed
19 calculations and, you know, all these different
20 scenarios that we had to -- I'm sorry, I keep
21 saying "we" -- that the individuals involved
22 had to calculate and quantify.

23 Q. Well, do you recall whether HCMFA
24 admitted certain fault and liability for this
25 error?

1 WATERHOUSE - 10-19-21

2 A. I don't recall specifically.

3 Q. Do you recall whether HCMFA caused
4 any funds to be paid to the investors and the
5 fund the subject of the NAV error?

6 A. Yes.

7 Q. Do you recall the approximate amount
8 of funds, moneys paid to the investors and the
9 fund?

10 A. It was -- it was approximately
11 \$7 million.

12 Q. If I was to suggest 7.8 million,
13 would that ring more true or are you sticking
14 with your original answer?

15 A. It was -- it was approximately 7 --
16 7 to \$8 million. Again, I don't remember the
17 exact number, but it was in that ballpark.

18 Q. So regardless of whether HCMFA
19 accepted fault or liability, it caused some
20 \$7 million or more to be paid out to affected
21 investors in the fund?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. And I want to make sure I'm
25 understanding your question because there is a

1 WATERHOUSE - 10-19-21

2 lot of different entities that are going on to
3 my head.

4 I think what you are saying is based
5 on this error, shareholders were harmed by this
6 approximately \$7.8 million -- by approximately
7 \$7.8 million. Is that what you are asking?

8 Q. Yes, sir.

9 A. Yes, that was -- again, I don't have
10 the exact numbers. If I take -- it was -- it
11 was in that ballpark, and there is a detail
12 calculation and write-up that could, that --
13 that exists someplace.

14 Q. Now, at that time, at the time that
15 the NAV error occurred, was there a contract in
16 place between HCMFA and the debtor pursuant to
17 which the debtor was providing services to
18 HCMFA?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. Yes.

22 Q. Was that contract generally called a
23 shared services agreement?

24 A. It was generally called that, but
25 there were -- there were -- I mean, it -- it --

1 WATERHOUSE - 10-19-21

2 it depends on who you talk to, but yes,
3 generally, there were -- there are multiple
4 agreements.

5 Q. Pursuant to one or more of those
6 agreements, was the debtor providing certain
7 services to HCMFA?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes.

11 Q. And can you at a very high level
12 summarize in 2018 and 2019 what those services
13 were?

14 A. Yes, there was a -- yes.

15 Q. Okay. Please -- please go -- go
16 through a short summary.

17 A. There was a -- a cost reimbursement
18 agreement between Highland Capital Management
19 Fund Advisors and Highland Capital Management,
20 L.P. That agreement was for what we referred
21 to as front office services, so investment
22 management, things of that nature.

23 There was I think what most people
24 refer to as the shared services agreement that
25 was -- that agreement was between Highland

1 WATERHOUSE - 10-19-21

2 Capital Management Fund Advisors and Highland
3 Capital Management for back office services.

4 Q. And can you summarize what you mean
5 by back office services?

6 A. Those services were for accounting,
7 finance, tax, valuation, HR, IT, you know,
8 legal compliance, things of -- things of those
9 nature -- or things of that nature, excuse me.

10 Q. So in the spring of 2019, do you
11 recall whether HCMFA took the position that it
12 was actually Highland that caused the NAV error
13 to occur pursuant to the valuation services
14 that Highland was providing?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I do not recall.

18 Q. Did you ever have any discussions
19 with anyone, Jim Dondero or anyone in the first
20 half of 2019 as to whether Highland, the
21 debtor, that is, had any liability to HCMFA
22 related to the NAV error?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I do not recall.

1 WATERHOUSE - 10-19-21

2 Q. And then you mentioned that the fund
3 was being closed and some compensation related
4 to that. Can you -- can you elaborate? What
5 were you referring to?

6 A. Right. So the advisor, pursuant to
7 board approval, put a proposal in front of the
8 shareholders of the Highland Global Allocation
9 Fund to convert it from an open-ended fund to a
10 closed-end fund.

11 So an open-ended fund, when
12 shareholders subscribe to the fund or redeem
13 into the fund, they do it at NAV.

14 When it is -- when you have a
15 closed-end fund, closed-end funds are -- are
16 publicly-traded, like on the New York Stock
17 Exchange, exchanges like that, and -- and
18 shareholders or investors, they're not --
19 they're -- they're not subscribing and
20 redeeming with the fund. They are like shares
21 of Apple.

22 Those shares of the Highland Global
23 Allocation Fund trade on an exchange, and that
24 is how you, you know, that is how, you know,
25 you become an equity owner in the fund or you

1 WATERHOUSE - 10-19-21

2 sell your shares and you are no longer an
3 equity owner.

4 As part of that proposal, the
5 advisor told shareholders if you -- if you vote
6 for this proposal to -- to convert it from an
7 open-ended fund to a closed-end fund, we will
8 pay you some amounts of money. I forgot -- a
9 certain number of points. I think it was
10 like -- it was like two to three points or
11 something -- something like that.

12 Q. Okay. You mentioned when Mr. Morris
13 was asking you, going back to those two
14 promissory notes, you will recall the 5 million
15 and 2.4 million, you mentioned something to the
16 effect that Mr. Dondero told -- told you to pay
17 some moneys out of Highland. Do you remember
18 that discussion with Mr. Morris?

19 A. I do.

20 Q. So, to the best of your
21 recollection, did you have a discussion with
22 Mr. Dondero about making some payments in May
23 of 2019 out of Highland?

24 A. I recall, as I testified earlier,
25 that I had a conversation with Mr. Dondero

1 WATERHOUSE - 10-19-21

2 for -- for these amounts attributable to -- it
3 was either the error -- you know, the error,
4 and in that conversation he said, go get the
5 money from Highland. I believe that is what I
6 testified earlier, and that -- that is my
7 recollection.

8 Q. Do you recall if that was an
9 in-person meeting or some other mode for the
10 meeting?

11 A. I -- I -- I recall that being
12 in-person.

13 Q. Do you recall if anyone else was
14 present, or was it just you and Mr. Dondero?

15 A. I recall just he and I.

16 Q. And the moneys that he told you to
17 find from -- or get from Highland, was that in
18 the amount of \$5 million and \$2.4 million?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I believe so, but I would have to go
22 back and look and see when those moneys were
23 actually paid into the -- into the fund and,
24 you know, when those transfers were done. If
25 they were all done around that same time, then

1 WATERHOUSE - 10-19-21

2 yes, I would say it was -- it was all related
3 to that.

4 Q. Did Mr. Dondero tell you that those
5 funds would be a loan from Highland to HCMFA?

6 A. I don't recall.

7 MR. MORRIS: Objection to the form
8 of the question.

9 Q. Now, and forgive me, I'm probably
10 the only non-American born here, but I speak
11 reasonably well in English. I don't recall,
12 does that mean you don't remember or does that
13 mean it didn't happen?

14 MR. MORRIS: Objection to the form
15 of the question.

16 A. It -- it means I don't -- I don't
17 remember.

18 Q. Did Mr. Dondero tell you to have
19 those two promissory notes prepared?

20 A. I don't recall.

21 Q. When you -- again, when you say, I
22 don't recall today, that means that sitting
23 here today, you just don't remember one way or
24 the other. Is that accurate?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Is it possible that you, having
3 heard what Mr. Dondero said and seeing funds
4 being transferred, assumed that that would be a
5 loan without him actually telling you that
6 would be a loan?

7 MR. MORRIS: Objection to the form
8 of the question.

9 A. Sorry, I want to make sure -- did I
10 ask the amounts that were transferred that I --
11 that -- that I assumed that that was a loan?

12 Q. Well, let me -- let me take -- let
13 me try again.

14 So you have established already that
15 there were quite a number of promissory notes
16 back and forth -- I'm sorry, quite a number of
17 promissory notes with affiliated companies and
18 individuals owing Highland money; right?

19 A. Yes.

20 Q. And you have established that there
21 were many transactions and transfers going back
22 and forth over the years; right?

23 MS. DANDENEAU: Objection to form.

24 A. In -- yes, in my capacity as CFO and
25 my employment, yes, that is -- yes.

1 WATERHOUSE - 10-19-21

2 Q. And that's part of the reason why
3 you just can't remember some of the details
4 today because this -- this happened years ago,
5 and there were a number of transactions. Is
6 that accurate?

7 MS. DANDENEAU: Objection to the
8 form.

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. I mean, I deal with thousands of --
12 of -- of -- of transactions, you know, whether
13 it has -- the processing of transactions, you
14 know, if it has got, you know, more -- more
15 zeros, you know, behind it than others.

16 When you look at thousands of
17 transactions over the years for funds and
18 advisors and -- and, you know, financial
19 statements, I mean, it is -- it is very hard
20 going back in -- in -- in my -- you know,
21 14-ish year career at -- at Highland to
22 remember a lot of those details, especially
23 when I don't have any records or books or
24 anything like that, and -- and going back many
25 years.

1 WATERHOUSE - 10-19-21

2 Q. And that is fine. That -- that --
3 that is why I asked the question.

4 Is it possible in May of 2019 when
5 Mr. Dondero told you to transfer the funds from
6 Highland, you just assumed on your own that
7 those would be loans without him actually
8 telling you that those would be loans?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. I don't know.

12 Q. I'm sorry, you --

13 A. I said I don't know.

14 Q. Okay. Well, as the -- as the CFO
15 for Highland, if you saw \$7.4 million going
16 out, you would feel some responsibility to
17 account for that, wouldn't you?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. Yes.

21 Q. Is it fair to say that those would
22 be in the range large enough to rise up to your
23 level?

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 A. If -- I don't know if I understand
3 your question. Those amounts would arise to my
4 level where I would be involved or...

5 Q. You would want to know what a
6 transfer for that amount, \$7.4 million, was all
7 about, as the CFO of Highland, wouldn't you?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes, I make it -- I mean, I -- I
11 review all sorts of payments, I mean, even
12 smaller dollar payments on a periodic basis,
13 you know, to -- to -- to understand and to make
14 sure that we are paying things in a -- you
15 know, in -- in -- in an informed way. And, you
16 know -- and we're -- and we're paying things
17 pursuant to vendor contracts and things like
18 that.

19 Q. So as part of that, is it possible
20 that seeing \$7.4 million go out you would have
21 promissory notes made in order to keep a paper
22 trail, assuming that those were loans, when
23 perhaps they were never intended to be loans by
24 Mr. Dondero?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. I don't know. As I testified
4 earlier, I had conversations with Mr. Dondero
5 about -- about the -- the -- the moneys that
6 were needed for the NAV error. And I recall
7 him saying go get it from Highland -- or get it
8 from Highland.

9 Q. Well, why did you sign those
10 promissory notes and why didn't you have him
11 sign them?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. I don't know. I don't know.

15 Q. You mentioned earlier that you
16 typically don't sign promissory notes. Am I
17 remembering your testimony correctly?

18 I mean, promissory notes on behalf
19 of the entities. Not yourself, obviously.

20 A. Yes, that is what I said earlier.

21 Q. Do you recall any other promissory
22 notes in the million-plus range that you had
23 ever signed before on behalf of any entity?

24 A. There is -- there has been a lot of
25 transactions over the years. I don't -- I

1 WATERHOUSE - 10-19-21

2 don't -- I don't recall generally. I don't --
3 I don't recall.

4 Q. So -- but to the best of your
5 recollection, it was on your initiative,
6 following your discussion with Mr. Dondero,
7 that you had someone draft those two promissory
8 notes; is that correct?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Yes, we would have -- the team, as I
12 stated earlier, we don't draft promissory
13 notes. "The team" meaning the accounting and
14 finance team.

15 So the team would have worked with
16 the legal group at Highland to draft any notes.

17 Q. Do you believe or do you have any
18 recollection as to whether you would have done
19 that pursuant to an email or telephone call or
20 in-person meeting?

21 MR. MORRIS: Objection to the form
22 of the question.

23 A. Are you asking if I would have -- if
24 those notes would have been drafted pursuant to
25 an email or phone call?

1 WATERHOUSE - 10-19-21

2 Q. Strike that.

3 Do you recall whether you sent an
4 email to anyone asking them to draft those two
5 promissory notes?

6 A. I don't recall because, again,
7 once -- I would have instructed -- likely
8 instructed the team to -- to work with the
9 legal group to draft these documents.

10 I -- I -- I -- yeah, I didn't -- I
11 mean, that is more an operational-type
12 procedure. So, you know, a manager or a
13 controller or working with legal. You know,
14 they -- they can certainly handle that task to
15 get that -- you know, to request that from
16 legal.

17 Q. And who on your team do you think
18 you would have asked to do that?

19 MR. MORRIS: Objection --

20 Q. Who would have been the logical
21 person or people, if you don't remember their
22 name today?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. It -- it -- there is only two

1 WATERHOUSE - 10-19-21

2 managers of the group. That would have been
3 Dave Klos or Kristin Hendrix.

4 Dave was the -- one of his duties
5 was managing the valuation team, and so he was
6 intimately involved with this process. So, you
7 know...

8 Q. Okay.

9 A. I don't recall specifically but, I
10 mean, my general -- you know, I -- I -- I
11 likely would have talked to Dave first about it
12 versus someone like Kristin who hadn't been
13 intimately involved.

14 Q. And -- and do you have a view as to
15 whether it is most likely that you would have
16 done that by email or in-person or how would
17 you believe you would have communicated that to
18 Mr. Klos?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I likely would have done that in
22 person. Again, if things of this nature
23 that -- again, you have to put ourselves back
24 to, we have been working on this very stressful
25 project for many, many months. And once the

1 WATERHOUSE - 10-19-21

2 go-ahead was to -- you know, we see the light
3 at the end of the tunnel with wrapping this up
4 and making shareholders whole -- sorry to say
5 "we" -- you know, the -- so the folks that are
6 involved in it.

7 I like to talk to people
8 face-to-face and -- and -- and go to -- and go
9 to their desk, because that shows if I'm going
10 to their desk that -- that is something that I
11 want done, you know.

12 Q. And do you remember, Mr. Waterhouse,
13 getting those two promissory notes in paper
14 format or by email before they were executed?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't recall.

18 Q. For whatever was the ordinary course
19 back then in May 2019, would you expect to have
20 received them only on paper or would you have
21 expected to have received them in Word document
22 or PDF document by email?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I -- I didn't sign -- I signed very

1 WATERHOUSE - 10-19-21

2 few documents via email. I can't say that it
3 never happened, but people either stopped by my
4 office and physically walked in documents for
5 signature that we discussed face-to-face.

6 Or documents were -- if -- if --
7 if -- if -- let's say I wasn't there or I
8 wasn't available, documents were dropped off.
9 I had -- I had some in- and outboxes in front
10 of my -- my office there at the Crescent.

11 Documents would be dropped off for
12 signature. There would be a cover sheet that
13 would be -- have been applied to those
14 documents detailing, you know, who dropped it
15 off, the purpose, why, what time.

16 And then, you know, as I stated, I
17 don't draft documents and I always go to the
18 legal group and the compliance group to make
19 sure that they're in the loop. And there is
20 a -- a box or section that says, Has legal
21 reviewed or approved, or something to that
22 nature.

23 Again, I don't -- I don't have
24 access to that cover sheet anymore, but it
25 was -- it was something to that effect.

1 WATERHOUSE - 10-19-21

2 And my assistant, you know, if she
3 was there, she would review that -- you know,
4 whatever was being dropped off. And if that
5 has legal, you know, reviewed or -- reviewed or
6 approved it, if that wasn't -- if that stuff
7 hadn't been done, it was like she would just
8 tell them like, go -- go -- go to the legal
9 group, because --

10 Q. Let me -- let me pause --

11 MS. DANDENEAU: Let him finish.

12 MR. MORRIS: Thank you. Go ahead.

13 A. I take -- go to the legal group
14 because that -- that was my -- you know, I
15 didn't -- I didn't review anything that -- that
16 they weren't -- you know, or there wasn't some
17 representation made to me that they had
18 reviewed, approved in some capacity.

19 Again, my -- my -- my goal, as CFO,
20 is to provide transparency and make sure that
21 groups like compliance and other things -- and
22 the other group in legal are -- are in -- you
23 know, their -- they're made aware of
24 transactions of -- you know, that are crossing
25 my desk.

1 WATERHOUSE - 10-19-21

2 Because I'm not in every
3 conversation. They're not in every
4 conversation -- meaning legal compliance -- and
5 I just want to make sure that -- that everyone
6 is in sync to, you know, to -- to the extent
7 possible.

8 Q. So if we summarize, you don't
9 specifically remember signing these two notes,
10 but most likely it would have been that they
11 would have presented -- been presented to you
12 physically on paper?

13 MR. MORRIS: Objection to the form
14 of the question.

15 A. They would -- they would have been
16 presented physically on paper most likely or
17 someone would have left it. But, I mean,
18 again, I don't -- I don't recall.

19 Q. I understand. Understand.

20 When you signed -- when you signed
21 documents, when you personally signed
22 documents, did you typically use a ink pen or
23 did you use a stamp?

24 A. No, I -- I -- I use a -- an -- an
25 ink pen.

1 WATERHOUSE - 10-19-21

2 Q. Do you know -- was there a file at
3 Highland kept anywhere with ink-signed
4 originals of a promissory notes in general or
5 these two promissory notes specifically?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Sorry, I just want to make sure I
9 understand your question. Are you saying is
10 there a file somewhere that has ink-signed
11 originals of these two promissory notes?

12 Q. Yes.

13 A. I would -- I would assume they're
14 some place. I mean --

15 Q. Well, was there a -- was there a
16 place where Highland generally kept originals
17 of promissory notes owed to it?

18 A. I wouldn't -- no.

19 MR. RUKAVINA: Mr. Nguyen, would you
20 please pull up my A7, alpha 7.

21 Q. These are the two promissory notes,
22 Mr. Waterhouse.

23 (Exhibit A7 marked.)

24 Q. And please -- Mr. Waterhouse, please
25 command my associate to scroll down as you need

1 WATERHOUSE - 10-19-21

2 to, but I want you to take a very close look at
3 your two signatures here and tell me whether
4 you believe, in fact, that you ink signed them
5 or whether you --

6 MS. DANDENEAU: Mr. Rukavina,
7 Mr. Waterhouse has the copies.

8 MR. RUKAVINA: Perfect. Then you
9 can take this down, Mr. Nguyen.

10 A. These -- these -- these signatures
11 are identical, now that I stare at them, and I
12 mean, they are so close -- I mean, they're
13 identical that, I mean, even with my chicken
14 scratch signature, I don't know if I can -- you
15 know, I do this 100 times, could I do that
16 as -- as precisely as I see between the two
17 notes.

18 Q. Well, that is why I ask.
19 Mr. Waterhouse, now that you have examined
20 them, does it seem like it is more likely that
21 you actually electronically signed these?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Is -- I don't -- I don't recall
25 specifically. As I said before, my assistant

1 WATERHOUSE - 10-19-21

2 did have a -- an electronic signature, and that
3 was used from time to time. It wasn't as
4 common practice back in 2019. It definitely
5 was more common practice when we had to work
6 from home and remotely for COVID because it
7 that made it almost impossible to, right,
8 provide wet signatures since we're all working
9 from home remotely.

10 Q. Well, going just for these two
11 promissory notes, Mr. Waterhouse, in light of
12 your inability to remember any details, are you
13 sure you actually signed either or both of
14 those notes?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall specifically
17 signing -- actually physically signing these
18 notes. As I said before, I don't recall doing
19 that. This -- this looks like my signature,
20 but yet these two signatures are identical.

21 Q. So you don't recall physically
22 signing them, and I take it you don't recall
23 electronically signing them either?

24 A. I don't recall. You know, Highland
25 has all my emails. If that occurred, you know,

1 WATERHOUSE - 10-19-21

2 you know, I don't have any of these records is
3 what I'm saying. I don't have any of those
4 records.

5 Q. That is why I'm asking you these
6 questions in great detail because I don't have
7 those emails. I'm trying to -- I'm hoping that
8 you will give me some names or some details so
9 I can go look for more emails, but again, you
10 don't remember any -- any individual, other
11 than Mr. Dondero that we've discussed, you
12 don't remember any individual with whom you
13 discussed these promissory notes prior to their
14 execution?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't recall discussing it with
18 anybody else.

19 Q. Okay.

20 A. I mean, prior --

21 Q. I understand.

22 A. You know, there was no one else --
23 there was no one else in that meeting that I
24 recall with Mr. Dondero.

25 Q. Now, when you established that by

1 WATERHOUSE - 10-19-21

2 May of 2019 --

3 A. And -- and from what I recall, and
4 the reason why I was by myself is -- is, you
5 know, I don't -- I don't want to speculate, I'm
6 sorry.

7 Q. Okay. We have established that by
8 May of 2019, in your view, the liabilities of
9 HCMFA exceeded its assets; correct?

10 A. Yeah. I mean, again, I don't have
11 financial statements in front of me, but I
12 think, if I recall, we'd have to go through the
13 testimony with Mr. Morris, I believe that was
14 the case.

15 Q. In fact, you will recall that in
16 April of 2019, Mr. Dondero signed a document
17 that extended the demand feature of two prior
18 notes to May 31, 2019. Do you recall that?

19 MS. DEITSCH-PEREZ: I think you
20 might -- maybe have the court reporter read
21 that back. You might have misspoke.

22 (Record read.)

23 MR. RUKAVINA: And I did misspeak.

24 Q. I meant to say to May 31, 2021. Do
25 you recall that, sir?

1 WATERHOUSE - 10-19-21

2 MR. MORRIS: Objection to the form
3 of the question.

4 A. Yes.

5 MR. RUKAVINA: And, Mr. Nguyen, just
6 so that the record is clear, will you please
7 pull up my Exhibit Alpha 10, A10.

8 (Exhibit A10 marked.)

9 Q. You don't have this one in front of
10 you, Mr. Waterhouse? This is the one that
11 Mr. Morris used earlier. Do you see that
12 document, sir?

13 A. Yes, I do.

14 Q. And this is what you were testifying
15 about before when Mr. Morris was asking you.
16 Do you remember that?

17 A. Yes.

18 Q. So here is my question for you,
19 Mr. Waterhouse: As the chief financial officer
20 of Highland, was it prudent for Highland less
21 than three weeks later to be lending
22 \$7.2 million to an insolvent entity that
23 couldn't even then pay its debts back to
24 Highland?

25 MS. DANDENEAU: Objection to form.

1 WATERHOUSE - 10-19-21

2 MR. MORRIS: Objection to the form
3 of the question.

4 A. Sorry, I just want to make sure --
5 are you asking me, did you say, was it prudent
6 for Highland to loan \$7.4 million to HCMFA a
7 few weeks after this document was executed?

8 Q. Yes, and at a time when HCMFA's
9 liabilities exceeded its assets.

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I don't -- it is odd. I don't know.

13 MR. RUKAVINA: You can take this
14 exhibit down, Mr. Nguyen.

15 Q. Do you recall asking anyone,
16 Mr. Dondero or -- or anyone outside as to
17 whether Highland ought to be lending
18 \$7.4 million to HCMF regarding HCMF's
19 creditworthiness?

20 MR. MORRIS: Objection to the form
21 of the question.

22 A. I don't recall.

23 Q. Did you receive personally any of
24 that \$7.4 million?

25 A. No.

1 WATERHOUSE - 10-19-21

2 Q. Did you even --

3 MR. MORRIS: I didn't hear that
4 question, sir.

5 MR. RUKAVINA: The one that he
6 answered, John, or my new one?

7 MR. MORRIS: No, no, your question,
8 Davor.

9 MR. RUKAVINA: I had asked him
10 whether he received any of the
11 \$7.4 million. He said no.

12 MR. MORRIS: Yeah. I thought there
13 was a question after that. Maybe I was
14 mistaken. I apologize.

15 MR. RUKAVINA: I had started a new
16 question, so here, let me start the new
17 question again.

18 Q. Did you personally receive any
19 direct benefit from those two notes for
20 \$7.4 million?

21 A. No.

22 Q. Did you ever personally consider
23 yourself obligated to repay either or both of
24 those notes?

25 A. No.

1 WATERHOUSE - 10-19-21

2 MR. RUKAVINA: Pull up those notes
3 again, Mr. Nguyen.

4 Q. You can have them in front of you,
5 Exhibit 7, Mr. Waterhouse, whatever is easier
6 for you. If you go to your signature page, my
7 question to you is, why did you not include
8 your title as treasurer by your name, Frank
9 Waterhouse?

10 MS. DANDENEAU: Objection to form.

11 A. I didn't -- I didn't draft this
12 document.

13 Q. So you relied on whoever drafted it
14 to draft it correctly?

15 A. Yes.

16 Q. Okay. But back then when you signed
17 this, did it ever cross your mind that you were
18 the maker on these notes?

19 A. No.

20 Q. Back then when you signed this
21 document, did it ever cross your mind that you
22 could be a co-obligor on these notes?

23 A. No. I didn't receive \$7.4 million,
24 I mean...

25 Q. But can you say that HCMFA received

1 WATERHOUSE - 10-19-21

2 \$7.4 million?

3 A. I would have to go back and look and
4 check in, you know, the -- the financial
5 records and the bank statements.

6 MR. RUKAVINA: You can take this
7 exhibit down, Mr. Nguyen.

8 Q. Mr. Waterhouse, I'm not trying to be
9 a smart-ass, but if the law says that because
10 of the way that you signed this promissory
11 note, if that is what the law says, that that
12 made you personally -- personally liable, then
13 you would agree with me that that was never
14 your intent?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. That was never -- I wouldn't sign a
18 note and not get consideration in return.

19 Q. So putting all other issues aside,
20 if the law -- if the law says that you were
21 liable for those notes because of how you
22 signed them, then would you agree with me that
23 these notes are a mistake?

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: Objection to the
3 form.

4 A. Yes.

5 Q. So do you agree with me that it's
6 odd -- I think that is the word you used --
7 that Highland would be loaning \$7.4 million a
8 few weeks after that extension to an entity
9 whose liabilities exceeded its assets, and you
10 would agree with me that it was never your
11 intention to be in any way liable for these two
12 promissory notes; correct?

13 MR. MORRIS: Objection to the form
14 of the question.

15 A. Sorry, you -- you asked a lot there.

16 MR. RUKAVINA: I will strike it and
17 I will move on.

18 Let's go to -- pull up Exhibit 9,
19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha
20 9, A9.

21 (Exhibit A9 marked.)

22 Q. Sir, take a moment to look at this,
23 but this is an email, and you will see attached
24 July 31, 2020 affiliate notes.

25 Do you see that attachment?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Okay. And do you see an entry for
4 Highland Capital Management Fund Advisors?

5 MR. MORRIS: I'm sorry, hold on.

6 Where are you looking?

7 MR. RUKAVINA: Last page, John.

8 MR. MORRIS: Is it the page on the
9 screen?

10 MR. RUKAVINA: Oh, I'm sorry.

11 Mr. Nguyen just did it. Yes, the last page
12 there.

13 MR. MORRIS: Thank you.

14 Q. Do you see an entry there for HCMFA?

15 A. Yes.

16 Q. About \$10.5 million.

17 Do you see that?

18 A. I do.

19 Q. And, now, do you have any
20 explanation for why if HCMFA owed \$7.4 million,
21 plus the 5.3 million that had been extended,
22 why that amount was only 10.5 million?

23 A. I don't know. Okay.

24 MR. RUKAVINA: Close this one and
25 pull up, Mr. Nguyen, the schedules,

1 WATERHOUSE - 10-19-21

2 schedule of assets. What exhibit is this
3 of ours, Mr. Nguyen?

4 MR. NGUYEN: This is A11.

5 MR. RUKAVINA: Oh, this will be A11.

6 (Exhibit A11 marked.)

7 Q. You don't have this in front of you,
8 Mr. Waterhouse?

9 A. Okay.

10 Q. This is what Mr. Morris used
11 earlier. Do you remember looking at this with
12 Mr. Morris?

13 A. Yes.

14 MR. RUKAVINA: You might have to
15 zoom in a little. Okay.

16 Q. Now, I see Affiliate Note A, B, and
17 C.

18 Do you have any recollection as to
19 why the names of the affiliates are omitted?

20 A. I don't. I testified earlier that,
21 you know, the team worked with DSI in providing
22 these. I -- I don't -- I don't know.

23 Q. Can we deduce -- is it logical to
24 deduce that Affiliate Note A would be NexPoint
25 given its size of \$24.5 million?

1 WATERHOUSE - 10-19-21

2 MR. MORRIS: Objection to the form
3 of the question.

4 A. I mean, it -- it is a -- it is -- it
5 is approximate.

6 Q. Well, can we -- can we deduce -- or,
7 I'm sorry, strike that.

8 Can you, sitting here today,
9 logically conclude that Affiliate Note B or C
10 represents HCMFA?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. I don't know. I don't know. I
14 can't.

15 Q. Okay. As of the petition date, we
16 have established that HCMFA, under promissory
17 notes, owed \$7.4 million and \$5.3 million to
18 the debtor; correct?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. Yes.

22 Q. Okay. And by my reckoning, that
23 would be somewhere approaching \$13 million.

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 Q. It would be \$12.7 million. Is that
3 generally correct?

4 A. Sorry, the amounts were 7.4, 5.3.

5 Q. Yes.

6 A. Okay. Yeah, that -- that -- I can
7 do that math, yes.

8 Q. Do you have any explanation or any
9 understanding of why there is no similar entry
10 listed here on the schedule of assets filed
11 with the bankruptcy court?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. I don't know. We have to look at
15 the supporting schedules, like I talked about
16 other -- presumably there is -- there is a
17 build to the schedule that would provide the
18 detail.

19 Q. Well, that was going to be my next
20 question. You anticipated it.

21 MR. RUKAVINA: You can -- you can
22 take this down, Mr. Nguyen.

23 Q. Do you believe that whenever you and
24 your team provided the underlying data to the
25 financial advisor that the actual names of the

1 WATERHOUSE - 10-19-21

2 affiliates for Affiliate Note A, B, and C would
3 have been listed there?

4 A. Are you asking we provided the names
5 to the financial advisor? I don't -- I don't
6 understand who the financial advisor is.

7 Q. I'm sorry, DSI.

8 Let me ask the question this way,
9 Mr. Waterhouse.

10 Whenever you provided information
11 about the affiliate notes to DSI, do you
12 believe that you would have included the actual
13 names of the affiliates, you or your team, or
14 that you would have done the Affiliate Note A,
15 Note B, Note C?

16 MR. MORRIS: Objection to the form
17 of the question.

18 MS. DANDENEAU: Objection to the
19 form.

20 A. We -- like I testified earlier, when
21 we were -- we gave everything to -- to DSI. We
22 were giving all of our records, all of our
23 files, everything to DSI. We weren't redacting
24 information or saying, hey, here is a note,
25 here is Affiliate Note A or B.

1 WATERHOUSE - 10-19-21

2 I mean, it was -- our job and our
3 focus -- and I testified in court back in 2019;
4 right -- was -- was to be transparent and, you
5 know, get DSI up to speed on -- on the matters
6 at Highland. So I can't see us redacting at
7 that point.

8 MR. RUKAVINA: Mr. Nguyen, will you
9 please pull up Mr. Morris' Exhibit 36.

10 Just the very first page, the very top
11 email. You might zoom in a little bit.

12 Q. Now, you recall being asked about
13 this by Mr. Morris?

14 A. Yes, I do.

15 Q. And you wrote: The HCMFA note is a
16 demand note.

17 You wrote that; right?

18 A. Yes.

19 Q. And, in fact, weren't there by that
20 point in time several notes?

21 A. Yes, there were. Again, I don't --
22 I don't remember everything specifically. I
23 mean --

24 Q. I understand. I understand.

25 So this is an example where -- where

1 WATERHOUSE - 10-19-21

2 you might have made a mistake by referring to a
3 singular instead of a plural; right?

4 A. Yes.

5 Q. Okay. And you -- you wrote -- a
6 couple of sentences later, you wrote: There
7 was an agreement between HCMLP and HCMFA the
8 earliest they could demand is May 2021.

9 You wrote that; right?

10 A. Yes.

11 Q. But I think you -- you agreed with
12 Mr. Morris that that can't possibly apply to
13 the May 2019 notes, can it?

14 MR. MORRIS: Objection to the form
15 of the question. That is not what he
16 testified to.

17 Q. Let me ask -- let me ask a different
18 question.

19 Sitting here today -- or if you can
20 answer me from your memory on October 6,
21 2020 -- did the April acknowledgment that
22 extended the maturity date apply to the
23 May 2019 notes also?

24 A. I don't recall specifically.

25 Q. Well, you recall that the notes that

1 WATERHOUSE - 10-19-21

2 you signed were demand notes; right?

3 A. Yes.

4 Q. Do you find it logical, based on
5 your experience, that had they intended to have
6 a different or a set maturity date, you would
7 have instructed that that set maturity date be
8 included instead of a demand feature?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Sorry, just want to make sure I
12 understand. You are saying that -- that the
13 \$5 million note, the \$2.4 million note, if
14 those were supposed to be a term note, that I
15 would have made sure that those were a term
16 note?

17 Q. I'm saying -- I'm saying,
18 Mr. Waterhouse, that on May the 2nd and May the
19 3rd, 2019, if you intended that those two
20 promissory notes could not be called until May
21 2021, would you have included such language in
22 those two promissory notes?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I guess -- I'm sorry, I don't recall

1 WATERHOUSE - 10-19-21

2 putting language in those May notes. I don't
3 remember what language you are referring to.

4 Q. Well, let's read this again.

5 There was an agreement between HCMLP
6 and HCMFA the earliest they could demand is May
7 2021.

8 Do you recall that agreement?

9 A. Yes, that was the agreement we
10 looked at earlier; correct?

11 Q. Okay. Yes.

12 Do you -- do you understand now that
13 that agreement that we looked at earlier also
14 applied to the May 2019 notes that you signed?

15 A. I don't -- I don't know.

16 Q. But as of October 6, 2020, you're
17 writing that there is one demand note and
18 you're categorizing that demand note as not
19 being demandable on May 2021; correct?

20 A. Yes.

21 Q. And you know now that you made at
22 least one mistake in this email; correct?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 MR. RUKAVINA: You can pull this
3 down, Mr. Nguyen.

4 Q. So, Mr. Waterhouse, you don't
5 remember Mr. Dondero telling you to make these
6 loans or not. HCMLP was loaning \$7.4 million
7 to someone that their assets were less than
8 their liabilities.

9 We don't see on the July list of
10 notes, where there is \$12.7 million of notes,
11 we don't see that on the bankruptcy schedules,
12 and we have this Exhibit 36 where you are
13 confused.

14 Are you prepared to tell me, sir,
15 today that you might have made a mistake in
16 executing those two promissory notes?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. I -- I don't know.

20 Q. And if it turns out that you're
21 personally liable for those promissory notes,
22 it would certainly be a mistake, wouldn't it?

23 MS. DANDENEAU: Objection to the
24 form.

25 MR. MORRIS: Join.

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. If Mr. Dondero testifies that he
4 never told you to make these loans, would you
5 disagree with his testimony?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Like I testified earlier with my
9 conversation with Mr. Dondero, all I recall is
10 he said, get the money from Highland.

11 Q. And if Mr. Dondero testifies that
12 he, in consultation with other senior personnel
13 at Highland, decided that Highland needed to
14 pay HCMFA \$7.4 million as compensation for the
15 NAV error and not a loan, would you have any
16 reason to disagree with Mr. Dondero?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. If that was -- if that was his
20 intent, yes, it would -- I would --

21 Q. Do you have any reason to disagree
22 with him?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. If that was his intent, I don't

1 WATERHOUSE - 10-19-21

2 know. I don't know how I disagree with that.

3 Q. And just to confirm, you don't
4 remember ever asking Mr. Dondero whether you
5 should have two promissory notes prepared?

6 A. No.

7 Q. And you don't remember discussing
8 with Mr. Dondero what the terms of those two
9 promissory notes should be?

10 A. I don't recall -- I testified all I
11 recall is he said, get the money from Highland.
12 I don't -- the -- the terms of the note, I
13 don't recall ever having a discussion around
14 the terms of the note, but since I don't draft
15 the notes, that -- there could have been a
16 conversation with other people later.

17 Q. Do you have any memory of whether
18 after the notes were drafted, but before you
19 signed them, that you communicated with
20 Mr. Dondero in any way to just confirm or -- or
21 get his blessing or ratification to signing
22 those notes?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Again, the only thing you remember,
3 sitting here today, was Mr. Dondero said, get
4 the money from Highland, and that is it, that
5 is all you remember?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. I testified to that several times.
9 This was over two years ago. A lot has
10 happened. That is all I recall.

11 Q. And help me here. I'm not very
12 technologically astute. When you -- and I -- I
13 recognize that you do it rarely, but when you
14 sign a document electronically, do you believe
15 that there is an electronic record of you
16 having authorized or signed a document
17 electronically?

18 MR. MORRIS: Objection to the form
19 of the question.

20 A. I -- I don't know the tech answer to
21 that, but, you know, since I don't have -- I
22 don't ever attach my signature block
23 electronically, my assistant would have done
24 that, and if that is done over email like we
25 did several times -- you know, multiple,

1 WATERHOUSE - 10-19-21

2 multiple times over COVID, she would attach my
3 signature block and then email it out to
4 whatever party.

5 Q. What was your assistant's name in
6 May 2019?

7 A. It was Naomi Chisum.

8 Q. Is she the only one? I'm sorry, was
9 she your only assistant that would have maybe
10 facilitated logistically something like you
11 just described?

12 A. You know, she was out on maternity
13 leave at some point. I don't -- I don't recall
14 those dates where she was out for maternity
15 leave. There was -- there were folks backing
16 her up. I don't recall specifically who
17 those -- who those, you know, administrative
18 assistants were, and I don't recall
19 specifically if she was out during this time on
20 maternity leave.

21 I do know that that she was out for
22 a period of time, or who knows, or she could
23 have been on vacation that day or, you know, I
24 don't know.

25 Q. Switching gears now, the two

1 WATERHOUSE - 10-19-21

2 complaints that have been filed that is against
3 HCMFA and NexPoint, did you see any drafts of
4 those complaints before they were filed?

5 MR. MORRIS: Objection to the form
6 of the question, and to the extent that you
7 had any communications with counsel or you
8 were shown drafts of the complaints by
9 counsel while you were employed by
10 Highland, I direct you not to answer.

11 A. I -- I reviewed documents yesterday
12 with counsel here. I believe that is the first
13 time I have ever seen those.

14 Q. Okay. Did you ever discuss with
15 Mr. Seery these two lawsuits before or after
16 they were filed?

17 A. I don't recall.

18 Q. Were you ever interviewed by legal
19 counsel, to your knowledge, about these
20 promissory notes before the complaints were
21 filed? Without going into what was said, were
22 you ever interviewed by legal counsel?

23 MR. MORRIS: Objection to the form
24 of the question.

25 A. I don't recall.

1 WATERHOUSE - 10-19-21

2 Q. Obviously with COVID, it changed,
3 but -- but before COVID, did you used to meet
4 with Mr. Seery from time to time in-person?

5 A. Yeah, I mean, so before COVID -- so
6 we're talking kind of late March, early April,
7 right, there was about -- I don't remember the
8 specific date when the board for Highland was
9 appointed. I believe it was around February of
10 2020, so maybe there was a month-and-a-half,
11 two-month window where we were meeting
12 in-person or, you know, like we were actually
13 in the office, excuse me, we were in the
14 office.

15 And, you know, when they were first
16 appointed, the board members and Mr. Seery
17 were -- were definitely down here more
18 in-person.

19 Q. Did you ever see Mr. Seery taking
20 written notes of -- of his meetings with you or
21 others?

22 A. I don't recall.

23 Q. Do you recall on any Zoom or video
24 conference with Mr. Seery, seeing him take
25 notes, written notes?

1 WATERHOUSE - 10-19-21

2 A. The Zoom calls we had, I don't
3 recall having seen video or, you know, or if it
4 was on Zoom, I just remember it being -- well,
5 no, you know what, there were some -- you know,
6 I take that back.

7 So there were -- there were some
8 times that I did remember seeing Mr. Seery
9 on -- on some of the Zoom calls.

10 Q. Well, let me --

11 A. I don't -- sorry, I'm thinking. I'm
12 thinking -- I'm going back. I'm trying to
13 process this.

14 Q. I can make it much quicker,
15 Mr. Waterhouse. I have heard -- I have heard
16 that Mr. Seery is a copious note taker.

17 Do you have any knowledge about
18 that?

19 A. No.

20 Q. Okay. Switching gears yet again,
21 and this will be last theme. Do you need a
22 restroom break, or are you good to go for
23 another half an hour?

24 MS. DEITSCH-PEREZ: I need a
25 restroom break.

1 WATERHOUSE - 10-19-21

2 MR. RUKAVINA: Can we make it five
3 minutes?

4 THE WITNESS: Five minutes would be
5 great.

6 VIDEOGRAPHER: We're going off the
7 record at 5:53 p.m.

8 (Recess taken 5:53 p.m. to 5:59 p.m.)

9 VIDEOGRAPHER: We are back on the
10 record at 5:59 p.m.

11 Q. Mr. Waterhouse, I had asked you
12 earlier about contracts between HCMFA and the
13 debtor, and now I'm going to talk about
14 contracts between the debtor and NexPoint
15 Advisors. Okay?

16 A. Okay.

17 Q. Now, were there contracts similar to
18 the ones with HCMFA that NexPoint had in the
19 nature of employee reimbursement and shared
20 services?

21 A. Yes, they -- NexPoint Advisors and
22 Highland Capital Management Fund Advisors had
23 cost reimbursement and shared services
24 agreements with Highland Capital Management,
25 L.P.

1 WATERHOUSE - 10-19-21

2 Q. And was that shared services
3 agreement, to the best of your understanding,
4 in place as of December 31, 2020?

5 A. It was -- it was terminated at some
6 point, and I remember the contracts had
7 different termination dates, but I think the --
8 the date of termination was January 31st of
9 2021, after the termination was put in.

10 So yeah, it would be in place at the
11 end of the year of December -- it would be in
12 place at December 31st, 2020.

13 Q. And pursuant to that agreement as of
14 December 31st, 2020, was the debtor providing
15 what you would describe as back office services
16 to NexPoint?

17 A. Yes.

18 Q. Would those have included accounting
19 services?

20 A. Yes.

21 Q. And as part of those accounting
22 services, would the debtor have assisted
23 NexPoint with paying its bills?

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. So let's break that up. You were a
4 treasurer of NexPoint as well in December of
5 2020?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Yes.

9 Q. Okay. And in December of 2020, did
10 NexPoint have its own bank accounts?

11 A. Yes.

12 Q. And did it use those bank accounts
13 to pay various of its obligations?

14 A. Yes.

15 Q. Did employees of the debtor have the
16 ability to cause transfers to be made from
17 those bank accounts on behalf of NexPoint?

18 A. Yes.

19 Q. And is that one of services that the
20 debtor provided NexPoint, basically ensuring
21 that accounts payable and other obligations
22 would be paid?

23 A. Yes.

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 Q. You answered yes?

3 A. Yes.

4 Q. And the payments, though, whose
5 funds would they be made from?

6 A. From the bank account of NexPoint
7 Advisors. If they were NexPoint advisor
8 obligations, it would be made from NexPoint
9 Advisors' bank account.

10 Q. So let's pull up Exhibit Alpha 1.
11 You should have that -- it is my Tab 1 or my
12 Exhibit 1.

13 (Exhibit A1 marked.)

14 Q. So this is a -- this is a series of
15 emails, Mr. Waterhouse. Let's look at the
16 first page here, November 25, 2020, between
17 Kristin Hendrix and yourself.

18 Do you see that, sir?

19 A. I do.

20 Q. And do you see where Ms. Hendrix
21 writes: NPA.

22 Do you know what NPA stood for?

23 A. Yes.

24 Q. And what does it stand for?

25 A. NexPoint Advisors.

1 WATERHOUSE - 10-19-21

2 Q. And was that how you-all internally
3 at Highland refer to NexPoint Advisors, L.P.?

4 A. I mean, yes, amongst other things.

5 Q. And she writes at the bottom of her
6 email: Okay to release?

7 Do you see that?

8 A. Yes, I do.

9 Q. So what --

10 MR. MORRIS: Hold on one second.

11 Okay. Go ahead.

12 MR. RUKAVINA: Yeah.

13 Q. So what is -- what is Ms. Hendrix
14 here on November 25 asking of you?

15 A. She is asking me -- so she -- these
16 are -- these are payments -- typically we would
17 do an accounts payable run every week at the
18 end of every Friday. But looking at this date,
19 it is Wednesday, November 25th, which means, to
20 me, it is likely Thanksgiving weekend.

21 So this is the day before
22 Thanksgiving, so this is the last kind of --
23 kind of day before the holidays and vacation
24 and things of that nature. So it is
25 effectively the Friday of that week.

1 WATERHOUSE - 10-19-21

2 So she is -- she is putting in all
3 the payments for the week because we batch
4 payments weekly. And these are the payments
5 that go out that week, and she is informing me
6 of the payments and -- you know, again, at the
7 bottom of the email, she is asking for my okay
8 to -- to release these payments in the wire
9 system.

10 Q. So these would be accounts payable
11 of NexPoint?

12 A. I mean, it would be accounts payable
13 for all of these entities listed on this email.

14 Q. And who was Ms. Hendrix employed by
15 in November and December of 2020?

16 A. Highland Capital Management.

17 Q. Okay. So -- so part of the services
18 that NexPoint had contracted with was for
19 Highland to ensure that NexPoint timely paid
20 its accounts payable; is that accurate?

21 MR. MORRIS: Objection to the form
22 of the question. You have got to be
23 kidding me.

24 Q. Is that accurate?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. And did NexPoint rely on employees
3 of the debtor to ensure that NexPoint's
4 accounts payable were timely paid?

5 MR. MORRIS: Objection to the form
6 of the question.

7 A. Yes.

8 MR. RUKAVINA: Let's flip to the
9 next page, Mr. Nguyen, if you will please
10 scroll to the next page.

11 Q. So this is an email similar to the
12 prior one, November 30th.

13 Do you see where it says, NPA HCMFA,
14 USD \$325,000 one-day loan?

15 Do you see that, sir?

16 A. I do.

17 Q. Do you have any memory of what that
18 was?

19 A. I don't recall what that -- what
20 that payment was for.

21 Q. Did it sometimes occur that one
22 advisor would, on very short-terms, make loans
23 to another advisor?

24 A. Yes. This -- this -- this occurred
25 from -- from -- from time to time. It actually

1 WATERHOUSE - 10-19-21

2 looking at -- I'm -- I'm looking at the date of
3 this email. It is November 30th. It is the
4 last day of the month.

5 HCMFA has obligations it needs to
6 pay to its broker-dealer, which is HCFD. And
7 it likely was short funds to make those
8 obligations under that -- under its agreement,
9 and so it provided a one-day loan because on
10 the next business day on 12/1 -- or the next
11 business day in December, it would receive
12 management fees from the underlying funds that
13 it managed and it would be able to pay back
14 that loan to NexPoint Advisors.

15 Q. So -- so here Ms. Hendrix was
16 seeking your approval to transfer \$325,000 from
17 NexPoint to HCMFA for a one-day loan; is that
18 correct?

19 A. That is correct.

20 Q. Let's flip to the next page, sir.

21 MR. RUKAVINA: And, Mr. Nguyen, if
22 you will please scroll down.

23 Q. Now we have as an entry for
24 \$325,000, 11/30 loan payment.

25 Do you see that, sir?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. And that is probably the loan that
4 was approved on the prior page?

5 A. Yes, most likely.

6 Q. So is it also true, sir, that in
7 addition to accounts payable debtor employees
8 would be assisting NexPoint with respect to
9 paying back its debt?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I mean, yes, for loans of this
13 nature, yes.

14 Q. Well, what about long term loans?
15 Was it reasonable for NexPoint to expect debtor
16 employees to ensure that NexPoint timely paid
17 its obligations under long-term notes?

18 MR. MORRIS: Objection to the form
19 of the question.

20 MS. DANDENEAU: Objection to form.

21 A. I mean, that is one of the things
22 that the Highland personnel did provide to the
23 advisors. Yes, we would -- we would -- over
24 the years, yes, we -- we -- we -- we did do
25 that generally. Again, I don't remember

1 WATERHOUSE - 10-19-21

2 specifically but, yes, generally we -- you
3 know, we did do that.

4 Q. So do you recall -- and we can pull
5 it up, if need be -- that under the NexPoint
6 note that Mr. Morris asked you about earlier,
7 the one for more than \$30 million, that
8 NexPoint was obligated to make an annual
9 payment of principal and interest?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. Yes, it was -- yes, it -- it was an
13 amortizing note. It was -- you know, from what
14 we reviewed earlier, it was payable by
15 December 31st of each year. So -- but are --
16 are you asking me --

17 Q. I'm just asking you, sir, if you
18 recall the note.

19 A. Yes, the \$30 million note, yes, we
20 reviewed it earlier, yes.

21 Q. And do you recall Mr. Morris had you
22 go through the fact that NexPoint had made
23 payments in years prior to 2020 on that note?

24 A. I do.

25 Q. And do you believe that employees of

1 WATERHOUSE - 10-19-21

2 the debtor would have played any role in
3 NexPoint having made those prior payments?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. Yes.

7 Q. And what role in years prior to 2020
8 would employees of the debtor have had with
9 respect to NexPoint making that annual payment?

10 A. We -- we -- we would have -- I keep
11 saying "we." The team would have calculated
12 any amounts due under that loan and other
13 loans, as -- as standard course.

14 We would -- since we provided
15 treasury services to the advisors, we would
16 inform the -- the -- the -- we informed
17 Mr. Dondero of any cash obligations that are
18 forthcoming, whether we do cash projections.

19 If, you know, any of these payments
20 would have -- or, you know, the sum total of
21 all of these payments, including any note
22 payments, if there were any cash shortfalls, we
23 would have informed Mr. Dondero of any cash
24 shortfalls. We could adequately plan, you
25 know, in instances like that.

1 WATERHOUSE - 10-19-21

2 Or, sorry, we -- I say "we" -- I
3 keep saying "we" -- I keep wearing my -- again,
4 my -- my treasurer hat.

5 But, yes, it is to -- it is to
6 inform Mr. Dondero of the obligations of the
7 advisors in terms of cash and obligations that
8 are -- are upcoming and that -- and that are --
9 are scheduled to be paid.

10 Q. And would those obligations that are
11 upcoming and scheduled to be paid prior to 2020
12 have incurred the annual payment on that
13 NexPoint \$30 million note?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Davor, I think
16 you misspoke. You might want to just
17 repeat the question.

18 Q. Okay. Let me repeat the question,
19 sir.

20 Prior to 2020, those services that
21 you just described, would that -- on behalf of
22 the debtor, would that have included NexPoint's
23 payments on the \$30 million note?

24 A. Yes.

25 Q. So someone at the debtor in treasury

1 WATERHOUSE - 10-19-21

2 or accounting would have sent some schedule or
3 a reminder that a payment would be coming due
4 in the future. Is that generally the practice?

5 A. Yes, we would -- you know, again, I
6 didn't -- I didn't micromanage the teams, but
7 we had a -- a corporate accounting calendar
8 that we use as kind of a tickler file to keep
9 track of payments.

10 I actually, you know, don't know how
11 actively they're using that in -- in prior to
12 2020, but it was actively used at some point.

13 We did look at NexPoint cash
14 periodically and cash for the other advisors as
15 well and payments. You know, we -- payments
16 like this would have appeared in our cash
17 projections, in the advisor's cash projections.

18 And, again, as like I said earlier,
19 they would have appeared there, so there would
20 be time to plan for making any of these
21 payments.

22 Q. And based on your experience, would
23 it have been reasonable for NexPoint to rely on
24 the debtors' employees to inform NexPoint of an
25 upcoming payment due on the \$30 million

1 WATERHOUSE - 10-19-21

2 promissory note?

3 MR. MORRIS: Objection to form of
4 the question.

5 MS. DANDENEAU: Objection to form.

6 A. Yes. Yes, they did. I mean, but I
7 mean, but I don't think these -- these notes
8 were any secret to anybody.

9 Q. I understand, and I'm not suggesting
10 otherwise.

11 MR. RUKAVINA: Please pull up Alpha
12 2, Mr. Nguyen.

13 (Exhibit A2 marked.)

14 Q. Now, this document is similar to the
15 ones we've seen before as of December 31, 2020,
16 and I don't see under NTA anything there for
17 paying the promissory note to Highland.

18 Do you see anything like that?

19 A. I do not.

20 MR. RUKAVINA: You can pull that --
21 that exhibit down, Mr. Nguyen.

22 Q. You are aware, of course, by now
23 that, in fact, NexPoint failed to make the
24 payment due December 31, 2020, are you not?

25 A. I am aware, and yes, I do understand

1 WATERHOUSE - 10-19-21

2 it.

3 Q. Were you aware that Highland
4 accelerated that \$30 million promissory note?

5 A. I am aware.

6 Q. Were you aware of that acceleration
7 at the time that it occurred?

8 A. I don't remember specifically.

9 Q. Do you recall whether anyone asked
10 you -- prior to the acceleration, anyone asked
11 you at Highland, what Highland should do with
12 respect to the missed payment?

13 A. Did anyone ask me what Highland
14 should do about the missed payment?

15 Q. Yes, before acceleration.

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. I mean, what -- what I recall is
19 there was the -- sorry, are you asking me --

20 MS. DANDENEAU: Why don't you just
21 repeat the question, Mr. Rukavina.

22 Q. Let me try again, Mr. Waterhouse,
23 let me try again.

24 I am saying you're the CFO of
25 someone, in this case, Highland, and the

1 WATERHOUSE - 10-19-21

2 borrower failed to make the required payment.

3 Are you with me so far?

4 A. I am.

5 Q. Did anyone then ask you, what should
6 we do with respect to our rights against the
7 borrower that missed the payment?

8 A. Not that I recall.

9 Q. Did you play a role in the decision
10 to accelerate that \$30 million promissory note?

11 A. I did not.

12 Q. Do you recall whether Mr. Seery ever
13 asked you before the acceleration as to whether
14 he should accelerate the note?

15 A. I don't recall.

16 Q. And you don't recall when you
17 learned of the acceleration itself?

18 MR. MORRIS: Objection to the form
19 of that question.

20 A. It was -- it was sometime in
21 early -- in early 2021. I don't remember
22 specifically.

23 Q. But do you recall whether it was
24 after the acceleration had already been
25 transmitted?

1 WATERHOUSE - 10-19-21

2 MS. DANDENEAU: Objection to the
3 form of the question.

4 A. I don't recall.

5 Q. Do you recall in early to mid
6 January of 2021, after the default, discussing
7 the default with Mr. Dondero?

8 A. I do recall discussing with
9 Mr. Dondero after December 31, 2020?

10 Q. Yes, the fact of the default.

11 A. I don't recall.

12 MR. RUKAVINA: Let's pull up my
13 Exhibit 6, Alpha 6.

14 (Exhibit A6 marked.)

15 MR. RUKAVINA: And, Mr. Nguyen, if
16 you will please scroll down.

17 Q. This email chain begins with you
18 writing to Ms. Hendrix on January the 12th:
19 NexPoint note to HCMLP.

20 Do you see that, sir?

21 A. I do.

22 Q. Were you discussing this same
23 \$30 million note we're talking about right now
24 with Ms. Hendrix?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Do you recall what prompted
3 you to send that email to her?

4 A. Yes, I had -- I had a conversation
5 with Jim.

6 Q. Okay. And what -- what did you
7 discuss with Jim that led to this email chain?

8 A. He -- he called me and he said he
9 wanted to make payment on the NexPoint note,
10 and I didn't -- I didn't know the -- the amount
11 offhand, so I reached out to Kristin and got
12 the details and relayed that to him.

13 Q. And you see you sent that email to
14 her at 11:15 a.m. Does that help you remember
15 when you had this discussion with Mr. Dondero?
16 In other words, was it that morning or the day
17 before, or can you -- can you --

18 A. No, it was -- it was that morning.

19 Q. And do you recall how you had that
20 conversation with him?

21 MR. MORRIS: Objection to the form
22 of the question.

23 Q. By telephone, by email, in-person?

24 A. Yeah, he -- he called me. I was at
25 home. We were working from home here in

1 WATERHOUSE - 10-19-21

2 December of 2020. He called me from home. He
3 said he was in court. He wanted to -- he asked
4 about, you know, making payment on the note and
5 the amount, and so I didn't have those numbers
6 in front of me, so I said I would get back to
7 him. I wanted all the details, so here is
8 this -- so I reached out to Kristin.

9 Q. And then she gave you that
10 \$1,406,000 figure?

11 MR. RUKAVINA: Mr. Nguyen, if you
12 will scroll up, please.

13 A. Yes. Yeah, she -- the \$1,406,112.

14 Q. And do you recall whether you
15 conveyed that amount to Mr. Dondero?

16 A. Yes. I -- I called him back and
17 gave him -- gave him this amount.

18 Q. Are you aware of whether NexPoint,
19 in fact, then made that 1 million 406 and
20 change payment?

21 A. Yes, they did.

22 Q. Did you discuss with Mr. Dondero at
23 that time, either the first conference or the
24 second conference that day -- strike that.

25 When you conveyed the number to

1 WATERHOUSE - 10-19-21

2 Mr. Dondero, was -- was it also on January
3 12th?

4 A. Sorry, when I conveyed the
5 \$1.4 million number?

6 Q. Yes.

7 A. Yes, yes, it was that -- it was --

8 Q. So you had --

9 A. It was that point.

10 Q. Well, to the best of your
11 recollection, you had a conference with
12 Mr. Dondero by the telephone in the morning,
13 and then another conference with him by
14 telephone after 11:40 a.m. that morning?

15 A. Yeah, I can't remember -- yeah, it
16 was either that morning or it could have been,
17 you know, early afternoon, but again, I
18 remember calling him back, relaying this
19 information to him, and he said, okay, pay --
20 you know, make -- make this payment.

21 Q. And during either of those two
22 calls, did you tell Mr. Dondero anything to the
23 effect that making those -- I'm sorry, making
24 that payment would not de-accelerate the
25 promissory note?

1 WATERHOUSE - 10-19-21

2 A. No.

3 Q. Did you tell him anything to the
4 effect that making that payment would not cure
5 the default?

6 A. No.

7 Q. Did you discuss that in any way with
8 him?

9 A. No, I did not.

10 Q. Did he say why he wanted to have
11 that \$1.4 million payment made?

12 MR. MORRIS: Objection to the form
13 of the question.

14 A. He -- he -- he didn't go into
15 specifics.

16 Q. Did he say anything to you to the
17 effect that if NexPoint makes that payment,
18 then the note will be de-accelerated?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. I don't recall.

22 MR. RUKAVINA: You can put this one
23 down, Mr. Nguyen.

24 Q. And, again, when you say you don't
25 recall, you mean you don't remember right now

1 WATERHOUSE - 10-19-21

2 either way; correct?

3 A. Yeah, I don't remember. I don't
4 remember us discussing that.

5 Q. Now -- and we're almost done, I
6 promise. I'm just going to -- I don't know how
7 to ask this question, so I'm just going to try
8 to do my best.

9 Prior to the default on December 31,
10 2020, did Mr. Seery ever tell you any words to
11 the effect that you or someone at Highland
12 should ensure that NexPoint doesn't make its
13 payment?

14 A. No.

15 Q. Did you have any hint or any belief
16 that anyone at NexPoint -- I'm sorry, strike
17 that.

18 Did you have any reason to believe
19 that anyone with Highland was actively trying
20 to get NexPoint to make that default by not
21 paying on December 31?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Are you asking, did any Highland
25 employees actively work to make -- to

1 WATERHOUSE - 10-19-21

2 somehow --

3 Q. Yes. Let me take a step back. Let
4 me take a step back.

5 So you are aware now that as a
6 result of that default, what was still some
7 25-year note was accelerated and became
8 immediately due. You are aware of that now;
9 right?

10 A. Yes.

11 Q. And can you see how someone at
12 Highland might actually have been pleased with
13 that development?

14 MR. MORRIS: Objection to the form.

15 Q. Not that they were --- not that they
16 were pleased, but you can see how someone at
17 Highland might have been pleased with that
18 development?

19 MR. MORRIS: Objection to the form
20 of the question.

21 MS. DANDENEAU: Object to form.

22 A. I don't know how they would have
23 reacted to that.

24 Q. Okay. But you're not -- you're not
25 aware of any instructions or any actions being

1 WATERHOUSE - 10-19-21

2 given or taken at Highland by Mr. Seery, the
3 independent board, DSI, that -- that would have
4 basically led Highland to ensure that NexPoint
5 would fail to make that payment?

6 A. I'm not aware.

7 Q. In other words, there wasn't a trick
8 or a settlement; right?

9 MS. DEITSCH-PEREZ: Objection to
10 form.

11 MS. DANDENEAU: Object to form.

12 MR. MORRIS: Object to form.

13 A. I'm not aware.

14 Look, I'm not aware. I'm not in
15 every conversation. I mean, and I'm just --
16 again, I'm sitting at home. It is the end of
17 the year. Again, I'm not aware.

18 Q. That is a perfectly legitimate
19 answer. I don't know why -- why you think
20 otherwise.

21 Okay. Just give me one second to
22 compose my thoughts.

23 MS. DEITSCH-PEREZ: While you're
24 taking your one second, why don't we take
25 three minutes. I will be right back.

1 WATERHOUSE - 10-19-21

2 VIDEOGRAPHER: Do we want to go off
3 the record?

4 MR. RUKAVINA: Yes.

5 VIDEOGRAPHER: All right. We're
6 going off the record at 6:27 p.m.

7 (Recess taken 6:27 p.m. to 6:30 p.m.)

8 VIDEOGRAPHER: We are back on the
9 record at 6:30 p.m.

10 MR. HORN: Is Deb back?

11 MS. DANDENEAU: Are you asking about
12 me? I'm here.

13 MR. HORN: Oh, okay. I don't see
14 you, sorry.

15 Q. Actually, yeah, Mr. Waterhouse, so
16 when you had --

17 MS. DANDENEAU: Are you asking about
18 Deb Dandeneau or Deborah? I mean, there
19 are a lot -- as we talked about, a lot of
20 Debs. I'm here.

21 MS. DEITSCH-PEREZ: I'm here.

22 MR. HORN: Yes, I was asking about
23 DDP.

24 MS. DEITSCH-PEREZ: Oh, DDP is here.

25 MR. HORN: Okay. Here we go. I'm

1 WATERHOUSE - 10-19-21

2 going back on mute.

3 MS. DANDENEAU: Get the right
4 nomenclature.

5 Q. Mr. Waterhouse, on January 12th,
6 2021, when you had those talks with Mr. Dondero
7 about the \$1.4 million payment, did you have a
8 communication or a conversation with Mr. Seery
9 about that payment after January 12th, 2021?

10 A. I don't recall.

11 Q. Well, in response to Mr. Dondero
12 reaching out to you, do you recall on that day,
13 January 12th, talking to Mr. Seery or anyone at
14 Highland other than the email chain we just saw
15 about Mr. Dondero's call with you?

16 A. Did I talk to -- I spoke with
17 Kristin -- I don't know if I spoke to her. I
18 likely spoke to Kristin Hendrix because we had
19 to get the wire on NexPoint's behalf to make
20 the payment to Highland.

21 Q. So it is true, then, that -- that
22 employees of the debtor did actually cause that
23 payment to be made when it was made after
24 January 12th?

25 A. Yes, I mean, we -- we -- as I

1 WATERHOUSE - 10-19-21

2 testified earlier, we provided that accounting
3 finance treasury function as -- under the
4 shared services agreement. And so once I
5 got the -- I talked to Jim, got the approval to
6 make this payment, we have to then make the
7 payment, or the team does, and so the payment
8 was made.

9 Q. Okay. But -- okay. And -- and
10 sitting here right now, after Jim called you,
11 you don't remember talking to anyone other than
12 the -- the couple of people you mentioned,
13 talking to anyone about something to the effect
14 that, hey, Jim wants to make this payment now?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I don't -- I don't recall.

18 Q. And does that include legal counsel?

19 Without going into any detail, on
20 January 12th or before that payment was made,
21 did you consult with legal counsel about
22 anything having to do with the \$1.4 million
23 payment?

24 A. I don't recall.

25 Q. Okay. Thank you, sir, for your

1 WATERHOUSE - 10-19-21

2 time.

3 MR. RUKAVINA: Pass the witness.

4 MR. MORRIS: I just have a few
5 questions, if I may.

6 MS. DEITSCH-PEREZ: Don't you go at
7 the end?

8 MR. MORRIS: Oh, I apologize. He is
9 your witness. I'm surprised you want to
10 ask him questions, but go right ahead.

11 MS. DEITSCH-PEREZ: Just have a
12 couple of things.

13 MR. RUKAVINA: And I will just
14 object to that, that he's our witness.
15 That's not --

16 MR. MORRIS: I'm not talking to you.
17 I'm not talking to you.

18 MS. DANDENEAU: Also, Mr. Morris, it
19 is -- it is --

20 MS. DEITSCH-PEREZ: He is not my
21 witness. He's been subpoenaed by you.
22 Okay?

23 That is no offense, Mr. Waterhouse,
24 I'm -- I'm not -- okay. Anyway.

25 EXAMINATION

1 WATERHOUSE - 10-19-21

2 BY MS. DEITSCH-PEREZ:

3 Q. Good evening. I'm very sorry to be
4 going last and I know you have had a long and
5 taxing day, so I thank you for indulging me.

6 The kinds of services that you
7 describe that the -- that Highland provided for
8 NexPoint, did Highland also provide similar
9 services to that to HCRE and HCMS?

10 A. Yes.

11 MR. MORRIS: Objection to the form
12 of the question.

13 Q. What kind of services did Highland
14 provide to HCRE and HCMS?

15 MR. MORRIS: Objection to the form
16 of the question.

17 MS. DEITSCH-PEREZ: What is your
18 objection, John?

19 MR. MORRIS: It is vague and
20 ambiguous. Unlike the advisors and
21 NexPoint, they actually had shared services
22 agreements.

23 MS. DEITSCH-PEREZ: I got -- I
24 understand your objection. That is fine.

25 Q. Let's take them one at a time.

1 WATERHOUSE - 10-19-21

2 What kinds of services did Highland
3 provide to HCRE?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. HCMS, Highland employees provided
7 accounting services, treasury management
8 services, potentially legal services. I
9 don't -- but I wouldn't have been directly
10 involved in that. But as far as the teams that
11 I manage, it was accounting, treasury, things
12 of that nature.

13 Q. Okay. And that was for HCM, LLP --

14 A. And -- and, sorry, it would also be
15 any asset valuation if needed as well.

16 Q. Okay. We went back and forth on
17 each other and I apologize, so just to clarify.

18 You were talking about the services
19 that Highland Capital Management provided to
20 HCMS; is that right?

21 A. HCMS. So, again, yes. And
22 accounting, treasury, valuation, and also tax
23 services too.

24 Q. Okay.

25 A. Tax services. Look, I'm expanding

1 WATERHOUSE - 10-19-21

2 this, their HR services as well.

3 Q. Okay. And did that include bill
4 paying?

5 MR. MORRIS: Objection to the form
6 of the question.

7 Q. Did the services that HCM provided
8 to HCMS include bill paying?

9 MR. MORRIS: Objection to the form
10 of the question.

11 A. Yes.

12 Q. And did the services that HCMLP
13 provided to HCMS include scheduling upcoming
14 bills?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes.

18 Q. And did HCMLP regularly pay -- cause
19 to be paid the payments on loans HCMS had from
20 HCMLP?

21 MR. MORRIS: Objection to the form
22 of the question.

23 A. Yes.

24 Q. Typically -- if there is a
25 typically, how far in advance of due dates did

1 WATERHOUSE - 10-19-21

2 HCMLP cause HCMS to pay its bills?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. I mean, it -- it -- it depend -- it
6 depended on the nature of the payment and the
7 vendor, but, you know, if there were -- if
8 there were larger scheduled payments, you know,
9 I would like to give at least 30 days notice.

10 And that is -- that is kind of my
11 rule of thumb so no one is surprised.

12 Q. Okay. And was it generally HCMLP's
13 practice to timely pay HCMS' bills?

14 MR. MORRIS: Objection to the form
15 of the question.

16 A. It -- it -- it -- that depended on
17 the nature of the payment.

18 Q. Okay. And can you explain what you
19 mean by that?

20 A. Yeah, I mean if -- if it was -- I
21 mean -- if there was some professional fees
22 that weren't -- you know, they were due but
23 they weren't urgent, those fees may not be paid
24 as timely as others that have a due date or --
25 or things like that.

1 WATERHOUSE - 10-19-21

2 Q. Okay. Are loan payments the kinds
3 of thing that HCMLP would pay on time because
4 of potential consequences of not paying on
5 time?

6 MR. MORRIS: Objection to the form
7 of the question.

8 A. Yes. As I testified earlier, we
9 would want to give, you know, notice on -- on
10 -- on larger payments and -- and things of that
11 nature so we didn't miss due dates.

12 Q. Okay. And over the course of time,
13 did HCMLP generally pay HCMS' loan payments in
14 a timely fashion?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I can't remember specifically, but
18 generally, yes.

19 Q. Okay. Now, did HCMLP provide
20 similar services to HCRE that you have
21 described it provided to HCMS?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Yes, but I don't think it -- it
25 provided -- I don't think it provided HR

1 WATERHOUSE - 10-19-21

2 services.

3 Q. Can you describe the accounting and
4 treasury services that HCMLP provided for HCRE?

5 A. Yeah, it -- it would provide
6 bookkeeping services on a -- on a periodic
7 basis. It would make payments, you know, as
8 needed.

9 Q. Okay. So did it provide --

10 A. And -- and I believe it -- it -- it
11 provided tax services as well.

12 Q. Okay. And so did it provide the
13 same kind of bill -- did HCMLP provide the same
14 kind of bill-paying services for HCRE that it
15 provided for HCMS and NexPoint?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. Yes.

19 Q. And over the course of time, did
20 HCMLP generally cause to be made the loan
21 payments that HCRE owed to HCMLP?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Yes.

25 Q. Did HCMLP make loan payment -- the

1 WATERHOUSE - 10-19-21

2 loan payment that was due from HCMS to HCMLP in
3 December of 2020?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. I don't believe that payment --
7 payment was made.

8 Q. Okay. And when HCMLP caused HCMS in
9 the past to make loan payments, whose money did
10 it use to make those payments?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. It was the -- the money in HCMS's
14 operating account would be made to that --
15 those moneys would be used to make payment to
16 Highland Capital Management.

17 Q. Okay. And Highland -- is it correct
18 that Highland Capital Management personnel had
19 the access to HCMS's accounts to be able to
20 cause such payments to be made?

21 A. Yes, Highland personnel had access
22 to those accounts.

23 Q. Okay. And so now for HCRE, whose
24 money was used when HCMLP caused HCRE
25 payments -- loan payments to Highland to be

1 WATERHOUSE - 10-19-21

2 made?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. It was -- it was cash in HCRE's bank
6 account that would be used to make payments to
7 Highland Capital Management.

8 Q. Okay. And so did Highland Capital
9 Management have access to HCRE's funds in order
10 to be able to make such payments?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. Personnel at Highland Capital
14 Management had access to HCRE's bank account to
15 effectuate the payments.

16 Q. Okay. And was the payment due from
17 HCRE to HCMLP due in December of 2020 made?

18 A. It --

19 Q. In December of 2020.

20 A. It was not.

21 Q. Okay. And was there money in HCRE's
22 account that would have enabled the payment to
23 be made had HCM personnel attempted to make the
24 payment?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. I -- I don't recall.

4 Q. Do you have any reason to believe
5 that either HCRE or HCMS simply didn't have the
6 funds on hand to make the December 2020
7 payments?

8 A. I don't know.

9 Q. I guess I'm asking, do you have any
10 reason to believe that they didn't have the
11 funds?

12 A. We managed cash for so many
13 different entities and funds, and I don't
14 recall, you know, where the cash position was
15 for HCRE and HCMS at 12/31/2020.

16 Q. Okay.

17 A. I just don't recall, and I don't --
18 and I don't remember what the loan payment
19 obligations were from HCRE to Highland, and
20 from HCMS to Highland. I don't recall. I
21 don't recall, I mean...

22 Q. Let me come at it a different way.
23 Were the -- were the payments that would
24 otherwise have been due in December of 2020
25 made in January of 2021 for HCMS and HCRE?

1 WATERHOUSE - 10-19-21

2 A. I believe the HCRE payment was made
3 in January of 2021. I don't recall any
4 payments being made from HCMS to Highland.

5 Q. If it -- how is it the HCRE payment
6 came to be made? Why did you make it -- why
7 did HCM make the payment in January of 2021?

8 A. Jim -- Jim called me and instructed
9 me to -- to make the payment on behalf of HCRE,
10 Jim Dondero -- Jim Dondero.

11 Q. Did he seem upset that -- that the
12 payment had not been made?

13 A. Yeah. On the note that was, you
14 know, that was the term note, yes, he -- he was
15 displeased that the -- that the payment had not
16 been made by year-end.

17 Q. Okay. And did you make the -- cause
18 the payment to be made as -- as requested?

19 A. Yes.

20 Q. And did anyone else from HCM
21 participate with you in causing the payment to
22 be made to -- on the HCRE loan?

23 A. Yes. It would have been Kristin
24 Hendrix. I -- again, I don't -- as I testified
25 earlier, I'm not an officer of HCRE. I don't

1 WATERHOUSE - 10-19-21

2 believe I'm an authorized signer. So I
3 can't -- other personnel have to make payment
4 from HCRE to -- to -- to -- to Highland.

5 Q. Okay. And in the conversation
6 that -- that you had with Mr. Dondero when he
7 requested the payment to be made, did you say
8 to him words to the effect, Jim, this loan is
9 going to stay in default, what are you making
10 the payment for, anything like that?

11 A. No.

12 Q. In fact, did you have the impression
13 from him that he thought that the loan would
14 be -- the default would be cured by making the
15 payment?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. Did I get the impression from Jim
19 Dondero that the loan would be cured if the
20 payment from HCRE --

21 Q. Yeah, if that is what he thought.

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. I didn't get any impression from him
25 on that at the time.

1 WATERHOUSE - 10-19-21

2 Q. Do you know whether there was an
3 HCMS term loan that had a payment due in
4 December of 2020?

5 A. I don't recall.

6 Q. Okay. And so the reason you don't
7 recall whether or not there was a payment in
8 January of 2021 is because you just don't
9 remember whether there was such a loan at all?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. I don't remember. There is -- there
13 is so many notes, and I mean, demands, and I
14 don't -- I don't remember. It's a lot to keep
15 track in your head.

16 Q. I understand, and -- and I hear your
17 frustration when you have explained that the
18 debtor has your documents and you don't, and so
19 I fully appreciate it, and this is no knock on
20 you. It's a knock on somebody else on this
21 call.

22 MR. MORRIS: I move to strike. That
23 was pretty obnoxious, but go ahead.

24 Q. Okay. But so, Mr. Waterhouse, if --
25 if a payment on the HCMS loan was made in

1 WATERHOUSE - 10-19-21

2 January of 2021, do you think it was part of
3 the same conversation where Jim Dondero said,
4 hey, why didn't that get paid, please make
5 that -- get that payment done?

6 MR. MORRIS: I object to the form of
7 the question.

8 A. Yes. Likely it would have been -- I
9 mean, again, I don't recall a payment being
10 made, but, you know, again, I don't remember
11 everything.

12 Q. Okay. Did -- at the time you were
13 communicating with Kristin Hendrix about the
14 payment being made, whichever payments were
15 made in January, did she say anything to you
16 about the payments not curing the loan
17 defaults?

18 A. No.

19 Q. Okay. All right. So I'm going to
20 take you back to very early in the deposition
21 when Mr. Morris was asking you about the --
22 the -- the -- the agreement with respect to
23 the -- the forgiveness element of the loans, so
24 that is just to orient you.

25 Do you remember that there was a

1 WATERHOUSE - 10-19-21

2 time that you and Mr. Dondero were
3 communicating about potential means of
4 resolving the Highland bankruptcy by what was
5 colloquially referred to as a pot plan?

6 A. Yes.

7 Q. Okay. And can you tell me generally
8 when that was?

9 A. Like mid -- mid 2020, sometime in
10 2020, mid 2020.

11 Q. Okay. And did the process of trying
12 to figure out what the numbers should be
13 involve looking at what one should pay for the
14 Highland assets?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. Yes.

18 Q. Okay. And did there come a time
19 when you were proposing some potential numbers
20 and Mr. Dondero said something to you like,
21 well, why are you including payment for the
22 related party notes, those, you know, were
23 likely to be forgiven as part of my deferred
24 executive compensation?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. Yes, we did have that conversation.

4 Q. Okay. Was that conversation in
5 connection with trying to figure out the right
6 numbers for a pot plan?

7 A. Yeah. I mean, it was -- it was -- I
8 mean, Jim -- Jim would ask for, you know,
9 most -- most recent asset values, you know, for
10 Highland, and -- and myself and the team
11 provided those to him, so it was in that
12 context.

13 Q. Okay. And does that refresh your
14 recollection that these communications were in
15 2020 rather than 2021?

16 MR. MORRIS: Objection to the form
17 of the question.

18 A. The -- the -- the executive
19 compensation discussions were definitely in
20 2020.

21 Q. Okay. Now, did you ever make
22 proposals that took into account Jim's comment
23 that the notes were likely to end up forgiven
24 as part of his compensation?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. Yes, we -- the team and myself put
4 together, you know, asset summaries of Highland
5 at various times for all the assets of
6 Highland, and not including the notes.

7 Q. Okay. And were those presentations
8 communicated to -- to Mr. Seery?

9 A. No. Well, look, I didn't tell -- I
10 didn't tell Mr. Seery. I don't know what
11 Mr. Dondero did with the information.

12 Q. Okay.

13 A. I did not have conversations with
14 Mr. Seery.

15 Q. Okay. Do you know who saw the
16 presentations that you put together that didn't
17 include the value of the related party notes?

18 A. We're talking presentations -- these
19 are -- these are Excel spreadsheets?

20 Q. Uh-huh.

21 A. I don't know who -- these were given
22 to -- to Jim Dondero. I don't know what was
23 done with them after that.

24 Q. Okay. You also mentioned earlier
25 that sometime during your tenure at Highland

1 WATERHOUSE - 10-19-21

2 you knew of the practice of giving forgivable
3 loans to executives.

4 MR. MORRIS: Objection to the form
5 of the question.

6 Q. Can you -- can you tell me what you
7 recall about that practice?

8 MR. MORRIS: Objection to the form
9 of the question.

10 A. Yes, so there were -- there were --
11 during my tenure at Highland, there were loans
12 or -- given to employees that were later
13 forgiven at a future date and time.

14 Q. Okay. And when the loans were
15 given, did the notes, to your recollection, say
16 anything about the potential forgiveness term?

17 MR. MORRIS: Objection to the form
18 of the question.

19 A. When you say "did the notes," did
20 the promissory notes detail the forgiveness?

21 Q. Yes.

22 A. Not that I recall.

23 Q. And until such time as whatever was
24 to trigger the forgiveness occurred, were the
25 notes bona fide notes as far as you were

1 WATERHOUSE - 10-19-21

2 concerned?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. Yes, similar to -- yes.

6 Q. Okay. You were going to say similar
7 to what?

8 A. Mr. Morris earlier today showed
9 notes of the financial statements about various
10 affiliate loans. I -- I -- I do recall these
11 notes because I -- at that time personally
12 worked on the -- the financial statements of
13 Highland. That was, you know, in my role as a
14 corporate accountant.

15 And there were -- those loans
16 were -- to the partners were detailed in the
17 notes to the financial statements, similar to
18 what we went through earlier today in the prior
19 testimony about what we saw with Highland
20 and -- and -- and the -- and HCMFA.

21 Q. Is it fair to say that on Highland's
22 balance sheet there were any number of assets
23 that the value of which could be affected by
24 subsequent events?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. Yes. I mean, yes, that -- there
4 are. And that is -- yes.

5 Q. Okay. And is it typical accounting
6 practice that until there is some certainty
7 about those potential future events, that asset
8 value listed on -- on the books doesn't take
9 into account those potential future events?

10 MR. MORRIS: Objection to the form
11 of the question.

12 A. Yeah, if those -- yes. If -- if
13 those future events, you know, at the time of
14 issuance are not known or knowable, like I
15 discussed earlier with, like, market practice,
16 asset dislocation, or, you know, I mean, things
17 like that, you -- I mean, it -- it could affect
18 its fair value --

19 Q. Okay.

20 A. -- in the future.

21 Q. And am I correct you wouldn't feel
22 compelled to footnote in every possible change
23 in -- in an asset when those possibilities are
24 still remote?

25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21

2 of the question.

3 A. The accounting standard is you have
4 to estimate to the best -- you know, to -- to
5 the best of your ability, the fair value of an
6 asset as of the balance sheet date under --
7 under GAAP.

8 Q. Did -- strike that.

9 Okay. Give me a minute. I'm
10 close -- I'm close to done. Let me just go off
11 and look at my notes for a second. So take two
12 minutes.

13 VIDEOGRAPHER: We're going off the
14 record at 7:02 p.m.

15 (Recess taken 7:02 p.m. to 7:03 p.m.)

16 VIDEOGRAPHER: We are back on the
17 record at 7:03 p.m.

18 Q. Mr. Waterhouse, is it generally your
19 understanding that people you work with now
20 have been asking the debtor for full and
21 unfettered access to their own former files?

22 MR. MORRIS: Objection to the form
23 of the question.

24 A. Yes, I am -- I am generally aware.

25 Q. Okay. And do you think you could

1 WATERHOUSE - 10-19-21

2 have been better prepared for this deposition
3 if the debtor had complied with those requests?

4 MR. MORRIS: Objection to the form
5 of the question.

6 A. I -- I -- I most certainly -- yes.
7 I mean, again, these are multiple years,
8 multiple years ago, lots and lots of
9 transactions.

10 You know, we asked about NAV errors
11 and, you know, things like that and these
12 are -- it would make this process a lot more --
13 a lot easier and if we had -- if we had access
14 to that.

15 Q. Okay. And has the debtor -- is the
16 debtor suing you right now?

17 A. Yes.

18 Q. And is the debtor trying to renege
19 on deals that it had previously made with you?

20 MR. MORRIS: Objection to the form
21 of the question.

22 A. Sorry, I need to -- it is my
23 understanding that the litigation trust is
24 suing me. And not being a lawyer, I don't
25 know -- is that the debtor?

1 WATERHOUSE - 10-19-21

2 Is that -- I don't know the
3 relationship. So, again, I'm not the lawyers.
4 I've said many times. But my understanding is
5 the litigation trust is suing me. I could be
6 wrong there. I don't know.

7 Q. Okay. I understand.

8 Someone with some connection to the
9 Highland debtor has brought a claim against
10 you; is that fair?

11 MR. MORRIS: Objection to the form
12 of the question.

13 A. Yes.

14 Q. Okay. And is there also some motion
15 practice in the bankruptcy where the debtor or
16 someone associated with the debtor is
17 attempting to undo something that was
18 previously resolved with you?

19 A. Yes.

20 Q. And so in one action somebody is
21 associated with the debtors trying to --
22 threatening you with trying to take money from
23 you, and then in the other -- and trying to --
24 and in the other they are threatening not to
25 pay you things that had previously been agreed;

1 WATERHOUSE - 10-19-21

2 is that correct?

3 MR. MORRIS: Objection to the form
4 of the question.

5 A. I want to be -- yes, I -- there
6 is -- I'm being sued, again, on -- on something
7 that was agreed to with Mr. Seery and myself.
8 I don't -- I don't -- I don't own that claim.

9 Q. Okay.

10 A. To be transparent, I don't own that
11 claim. So it is not my personal property.

12 Q. Okay.

13 A. And -- and being the nonlawyer, I
14 don't know how I can get sued for something
15 that I don't owe or, like, I don't own
16 anything. I'm not the lawyer. But, I mean, if
17 that is -- if I'm understanding the facts
18 correctly.

19 Q. Okay. And the lawsuit that was
20 filed that names you, that was just filed
21 this -- this past week; is that right?

22 MS. DANDENEAU: Ms. Deitsch-Perez, I
23 do want to interrupt at this point because
24 just as I told Mr. Morris, that this is a
25 deposition about the noticed litigation.

1 WATERHOUSE - 10-19-21

2 I really don't want to go -- go
3 afield --

4 MS. DEITSCH-PEREZ: Yeah.

5 MS. DANDENEAU: -- and open up a
6 whole new line of inquiry about the lawsuit
7 or the -- the motion and the bankruptcy
8 court. We will be here all night.

9 MS. DEITSCH-PEREZ: And I
10 understand.

11 Q. My -- my point is: Do you feel
12 like -- like there is some effort by these
13 parties related to the debtor to intimidate
14 you -- not that you -- I'm not saying you are
15 or you aren't.

16 But do you feel like there is some
17 effort to intimidate you and maybe an effort to
18 deter you from being as prepared as you might
19 be in this deposition?

20 MR. MORRIS: Objection to the form
21 of the question.

22 A. I was -- I was surprised by the
23 lawsuit, by me being named, because, again, I
24 don't own the asset and things like that.
25 Yeah, I just -- I want to move forward with my

1 WATERHOUSE - 10-19-21

2 life at Skyview.

3 MS. DEITSCH-PEREZ: Thank you.

4 THE WITNESS: Thank you.

5 FURTHER EXAMINATION

6 BY MR. MORRIS:

7 Q. If I may, I just have a few
8 questions.

9 Mr. Waterhouse, we saw a number of
10 documents that Mr. Rukavina put up on the
11 screen where Ms. Hendrix would send you a
12 schedule of payments that were due on behalf of
13 certain Highland affiliates.

14 Do you remember that?

15 A. Yes.

16 Q. And in each instance she asked for
17 your approval to make the payments; is that
18 right?

19 A. Yes, she did.

20 Q. And was that the -- was that the
21 practice in the second half of 2020 whereby
22 Ms. Hendrix would prepare a list of payments
23 that were due on behalf of Highland associates
24 and ask for approval?

25 A. Yes.

1 WATERHOUSE - 10-19-21

2 Q. And I think you said that there was
3 a -- a --

4 A. It was -- I think I testified to
5 this earlier when we talked about procedures
6 and policy, you know, again, I want to be
7 informed of -- of -- of -- of -- of any
8 payments that are going out. I want to be made
9 aware of these payments, and that was just a
10 general policy, not just for 2020.

11 Q. Okay. So it went beyond 2020?

12 A. Yes.

13 Q. Is that right?

14 A. Yes.

15 Q. Okay. And the corporate accounting
16 group would prepare a calendar that would set
17 forth all of the payments that were anticipated
18 in the -- in the three weeks ahead; is that
19 right?

20 A. I -- like I testified earlier, we
21 had a corporate calendar that was set up, you
22 know, to -- to provide reminders or, you know,
23 of anything of any nature, whether it is
24 payments or -- or financial statements or, you
25 know, whatever it is, you know, to meet

1 WATERHOUSE - 10-19-21

2 deadlines.

3 I don't know how, as I testified
4 earlier, how much they were using that
5 calendar.

6 Q. Okay. But -- but you did get notice
7 and a request to approve the payments that were
8 coming due on behalf of Highland's affiliates.
9 Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. I mean, generally, yes. I mean, you
12 know, as we saw with these emails, generally, I
13 mean, did that encompass everything, no.

14 Q. Okay. Do you know why the
15 payment -- do you know why there was no payment
16 made by NexPoint at the end of 2020?

17 A. Yes. There was -- there was -- we
18 talked about these agreements between the
19 advisors and Highland, the shared services and
20 the cost reimbursement agreement.

21 And in late 2020, there were
22 overpayments, large overpayments that had been
23 made over the years on these agreements, and it
24 was my understanding that the advisors were --
25 were talking with -- like Jim Seery and others

1 WATERHOUSE - 10-19-21

2 to offset any obligations that the advisors
3 owed to Highland as offset to the overpayments
4 on these agreements.

5 Q. Okay. Did you participate in any of
6 those conversations?

7 A. I did not.

8 Q. Okay. Do you know -- do you recall
9 that the -- at the end of November, the debtor
10 did notice to the advisors of their intent to
11 terminate the shared services agreements?

12 A. Like I testified earlier, there
13 was -- the agreements weren't identical, from
14 what I recall, and there is one that had a
15 longer notice period, which I think had a
16 60-day notice period. I don't recall which one
17 that was, so not all of them were -- notice
18 hadn't been given as of November 30th, for all
19 of the agreements.

20 Q. Upon the receipt of the -- the
21 termination notices that you recall, do you
22 know if the advisors decided at that point not
23 to make any further payments of any kind to
24 Highland?

25 MR. RUKAVINA: Objection, form.

1 WATERHOUSE - 10-19-21

2 A. No. The advisors -- the advisors
3 had stopped making payments prior to that
4 notice.

5 Q. Okay. And how do you know that the
6 advisors stopped making -- making payments
7 prior to the notice?

8 A. I had -- I had a conversation
9 with -- with Jim Dondero.

10 Q. And did Mr. Dondero tell you that
11 the advisors would no longer make payments to
12 Highland?

13 MS. DEITSCH-PEREZ: Object to the
14 form.

15 A. Yes, he -- he -- again, he said
16 they -- they -- the advisors have overpaid on
17 these agreements, to not make any future
18 payments, and that there needs to be offsets,
19 and they're working on getting offsets to these
20 overpayment.

21 Q. Do you know if anybody ever
22 instructed Highland's employees to make the
23 payment that was due by NexPoint at the end of
24 the year?

25 A. Did anyone instruct Highland's

1 WATERHOUSE - 10-19-21

2 employees to make that payment?

3 Q. Correct.

4 A. Anyone -- not that I'm aware.

5 Q. Were any of Highland's employees
6 authorized to make the payments on behalf of
7 its affiliates -- withdrawn.

8 Was any of Highland's employees
9 authorized to effectuate the payment on behalf
10 of NexPoint that was due at the end of the year
11 without getting approval from either you or
12 Mr. Dondero?

13 A. They had the -- they had the ability
14 to make the payment, but they didn't -- you
15 know, that -- that payment needed to be
16 approved.

17 Q. Okay. And it needed to be approved
18 by you or Mr. Dondero; is that right?

19 A. I mean, I'm not going to make the
20 unilateral decision.

21 Q. Is that a decision that you
22 understood had to be made by Mr. Dondero?

23 A. Yes. Sitting back in December of
24 2020, the -- that -- there was this off --
25 offset negotiation that -- that was happening,

1 WATERHOUSE - 10-19-21

2 so I mean, until those negotiations were
3 resolved, you know, there wasn't any
4 payments -- there weren't any payments.

5 Q. And -- and there were no payments
6 until the negotiations were resolved because
7 that was the directive that you received from
8 Mr. Dondero; correct?

9 A. I don't think he said -- I mean, I
10 think -- yeah, I mean -- I'm trying to recall
11 the conversation. It was -- you know, there
12 is -- there is these negotiations. There's --
13 there needs to be these offsets. They're
14 talking with the debtor. So, you know, until
15 this is resolved, right, I mean, depending on
16 how, whatever that resolution was, were we to
17 take any action.

18 Q. Okay. How about with respect to
19 HCMS, did HCMS have a term payment due at the
20 end of the year?

21 A. Again, I don't -- I don't recall.

22 Q. Okay. You discussed briefly two
23 payments that were made in January of 2021, one
24 on behalf of NexPoint, and one on behalf of
25 HCMS. Do I have that right?

1 WATERHOUSE - 10-19-21

2 A. No. The two payments I recall were
3 NexPoint and HCRE.

4 Q. Okay. And those two payments --
5 thank you for the correction. And those two
6 payments were made because Mr. Dondero
7 authorized those payments to be made; correct?

8 A. Yes.

9 Q. And they hadn't been made before
10 that because Mr. Dondero had not authorized
11 them to be made?

12 MS. DEITSCH-PEREZ: Object to the
13 form.

14 A. Yes, because of these negotiations.

15 Q. Okay. Just a couple of more
16 questions.

17 Did anybody, to the best of your
18 knowledge, on behalf of HCMFA, ever tell the
19 SEC that HCMLP was responsible for the mistakes
20 that were made on the TerreStar valuation?

21 A. Did anyone from Highland on HCMFA's
22 behalf tell the SEC that Highland -- that
23 Highland was responsible for there -- I just
24 want to make sure --

25 Q. It was a little bit different, so

1 WATERHOUSE - 10-19-21

2 let me try again.

3 A. These are very long questions, John.

4 I'm not trying to be --

5 Q. That is good. Do you know whether
6 anybody -- do you know whether anybody on
7 behalf of HCMS -- HCMFA ever told the SEC that
8 Highland was the responsible party for the
9 TerreStar valuation error?

10 A. Not that I'm aware.

11 Q. Okay. Did anybody on behalf of
12 the -- on behalf of HCMFA ever tell the retail
13 board that Highland was responsible for the
14 TerreStar valuation error?

15 A. Not that I'm aware.

16 Q. Do you know if HCMFA made an
17 insurance claim with respect to the damages
18 that were incurred in relation to the TerreStar
19 valuation error?

20 A. Yes.

21 Q. And do you know why they made that
22 insurance claim?

23 A. Because there was an error. I
24 mean --

25 Q. Was the insured's claim made -- was

1 WATERHOUSE - 10-19-21

2 the insurance claim made under HCMFA's policy?

3 A. Yes.

4 Q. Did HCMFA at any time prior to the
5 petition date -- withdrawn.

6 You were asked a couple of questions
7 where -- where you said that Mr. Dondero told
8 you that he was ascribing zero value to the
9 notes as part of a pot plan because he believed
10 that the notes were part of executive
11 compensation.

12 Do I have that right?

13 MS. DEITSCH-PEREZ: Object to the
14 form.

15 A. Yes.

16 Q. Okay. Have you ever heard that
17 before the time that Mr. Dondero told you that
18 in the conversation about the pot plan?

19 A. Had I heard that prior to my
20 conversation with Mr. Dondero?

21 Q. Yes.

22 A. No, I had not heard that prior.

23 Q. Okay. And that was in the context
24 of his formulation of the settlement proposal;
25 is that right?

1 WATERHOUSE - 10-19-21

2 A. I mean, generally, yes. You know,
3 we were asked to provide asset values, right,
4 and he was having settlement discussions.
5 Again, I don't know who those went to
6 ultimately. I don't recall.

7 MR. MORRIS: I have no further
8 questions. Thank you very much for your
9 patience. I apologize for the late hour.

10 MS. DEITSCH-PEREZ: John, you stay
11 on about your email when --

12 MR. RUKAVINA: Hold on, I'm not
13 done.

14 MS. DEITSCH-PEREZ: Oh, okay. Davor
15 still has questions. Sorry. I was going
16 to say both John and Davor, could you stay
17 on afterwards just to talk about the
18 requests.

19 FURTHER EXAMINATION

20 BY MR. RUKAVINA:

21 Q. Mr. Waterhouse, you were just now
22 testifying about a discussion you had with
23 Mr. Dondero where he said something like no
24 more payments.

25 Do you remember that testimony?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Okay. And was that late November or
4 early December of 2020?

5 A. It was, I would say, first or second
6 week of November.

7 Q. Okay. Do you recall whether --
8 whenever you had that discussion, whether
9 Mr. Dondero had already been fired by the
10 debtor?

11 A. Yes, I -- I believe he was not an
12 employee of the debtor anymore at that time.

13 Q. And when you were discussing this
14 with Mr. Dondero and he said no more payments,
15 you were discussing the two shared services
16 agreements and employee reimbursement
17 agreements we testified -- you testified about
18 before; is that correct?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. That is correct.

22 Q. And had your office or you -- and we
23 will talk at a future deposition about the
24 administrative claim.

25 But had -- by that time that you

1 WATERHOUSE - 10-19-21

2 talked to Mr. Dondero, had your office or you
3 done any estimate of what the alleged
4 overpayments were?

5 MR. MORRIS: Objection to the form
6 of the question.

7 A. Yes, we had -- there was a -- there
8 was a detailed analysis that was put together
9 by David Klos at the time.

10 Q. And do you recall just generally
11 what the total amount for both advisors of the
12 overpayments was?

13 A. It was in excess of \$10 million.

14 Q. Was it in excess of \$14 million?

15 MR. MORRIS: Objection to the form
16 of the question.

17 A. I -- I remember it was an
18 eight-figure number. I don't remember
19 specifically.

20 Q. Okay. And did you convey that
21 number to Mr. Dondero when you had that
22 conversation?

23 A. Yes.

24 Q. What was his reaction?

25 A. I mean, he wasn't happy.

1 WATERHOUSE - 10-19-21

2 Q. Is it fair to say he was upset?

3 A. Yes.

4 Q. Did Mr. Dondero ever expressly tell
5 you to not have NexPoint make the required
6 December 31, 2020, payment?

7 A. Yes, I recall him saying don't make
8 the payment because it was being negotiated, as
9 I discussed with Mr. Morris, this offset
10 concept. So there were obligations due by the
11 advisors to Highland, they should be offset
12 that -- you know, those obligations should be
13 offset by this -- by this overpayment.

14 Q. And when did he tell you that?

15 A. I would say -- I would say around --
16 probably December -- December-ish.

17 Q. Early December, late December?

18 A. I don't recall with as much
19 specificity as -- as -- as -- as stopping the
20 shared services payments, because we had
21 actually made one shared services payment in
22 November. So that is why I need to remember
23 that one more clearly. I don't remember where
24 exactly in December that conversation occurred.

25 Q. Did Mr. Dondero expressly use the

1 WATERHOUSE - 10-19-21

2 word "NexPoint" when he was saying don't make
3 these payments?

4 MR. MORRIS: Objection to the form
5 of the question, asked and answered.

6 A. Yeah, we were -- we were discussing
7 advisor obligations. So it was -- you know, it
8 was just obligations from the advisors.

9 And -- and he specifically talked
10 about the NexPoint payment as well.

11 Q. Okay. And it is your testimony that
12 he expressly told you not to make that NexPoint
13 December 31 payment?

14 MR. MORRIS: Objection, asked and
15 answered twice.

16 A. Yes, he -- he did, during that
17 conversation.

18 Q. And did you ever follow up with him
19 after that about whether NexPoint should or
20 shouldn't make that payment?

21 A. I did not.

22 Q. Did you ever, on or about
23 December 31, 2020, remind him and say, hey,
24 this payment is due, what shall I -- what
25 should I do?

1 WATERHOUSE - 10-19-21

2 A. I did not.

3 Q. So sitting here today, you -- you
4 remember distinctly that Dondero in December of
5 2020 expressly told you not to have NexPoint
6 make that payment?

7 MR. MORRIS: Objection, asked and
8 answered three times.

9 A. Yes.

10 Q. Can you say categorically it wasn't
11 just some general discussion where he told you
12 not to make payments?

13 MR. MORRIS: Objection, asked and
14 answer four times.

15 MR. HORN: Four times now. Go for
16 five.

17 A. Yes.

18 Q. Did you tell Mr. Seery that?

19 A. I don't believe I did. I don't
20 recall.

21 Q. And was this an in-person discussion
22 or telephone or email? Do you remember?

23 A. This was a phone -- a phone
24 conversation.

25 Q. Okay. Would you have a record of --

1 WATERHOUSE - 10-19-21

2 on your cell phone of when that conversation
3 might have taken place?

4 I'm sorry, strike that.

5 Was that by cell phone?

6 A. I believe -- yes, because we -- I
7 was at home. I mean, I don't have a landline.
8 All I have is my cell phone.

9 Q. Do you know whether your cell phone
10 still has records of conversations from
11 December 2020 on it?

12 A. My call log doesn't go back that
13 far.

14 Q. Okay. Thank you.

15 MR. RUKAVINA: I will pass the
16 witness.

17 MS. DEITSCH-PEREZ: Just a couple
18 quick questions.

19 FURTHER EXAMINATION

20 BY MS. DEITSCH-PEREZ:

21 Q. With respect to HCRE and HCMS, am I
22 correct there was -- there was no direction not
23 to pay those loan payments?

24 MR. MORRIS: Objection to the form
25 of the question.

1 WATERHOUSE - 10-19-21

2 A. Yes, I don't recall having
3 conversations about, you know, those -- those
4 entities.

5 Q. And, in fact, what was the tone that
6 Mr. Dondero had when he talked to you about the
7 fact that HCRE and HCMS payments hadn't been
8 made when he found out that they hadn't been
9 paid?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: Objection to form.

12 Q. What was the tone he took with you?

13 A. Oh, it was -- it was -- it was -- it
14 was very negative. I mean, I think he cursed
15 at me and he doesn't usually curse.

16 Q. Okay. And in your mind, is that
17 consistent with the fact that he was surprised
18 that those payments hadn't been made?

19 MR. MORRIS: Objection to the form
20 of the question.

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. MORRIS: I have nothing further.

24 Thank you so much, Mr. Waterhouse.

25 MR. HORN: I have no questions.

1 WATERHOUSE - 10-19-21

2 Thank you, Mr. Waterhouse. We appreciate
3 your time. I am logging off the discussion
4 and I will talk to y'all tomorrow.

5 MR. MORRIS: Super.

6 VIDEOGRAPHER: If there are no
7 further questions, this ends the
8 deposition -- excuse me. This ends the
9 deposition, and we are going off the record
10 at 7:30 p.m.

11 (Deposition concluded at 7:30 p.m.)

12
13 _____
14 FRANK WATERHOUSE

15
16 Subscribed and sworn to before me
17 this day of 2021.

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WATERHOUSE - 10-19-21


C E R T I F I C A T E

I, SUSAN S. KLINGER, a certified shorthand reporter within and for the State of Texas, do hereby certify:

That FRANK WATERHOUSE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th of October, 2021.



Susan S. Klinger, RMR-CRR, CSR

Texas CSR# 6531

1 WATERHOUSE - 10-19-21

2 NAME OF CASE: In re: Highland Capital

3 DATE OF DEPOSITION: October 19, 2021

4 NAME OF WITNESS: Frank Waterhouse

5 Reason Codes:

6 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page____Line____Reason_____

10 From_____to_____

11 Page____Line____Reason_____

12 From_____to_____

13 Page____Line____Reason_____

14 From_____to_____

15 Page____Line____Reason_____

16 From_____to_____

17 Page____Line____Reason_____

18 From_____to_____

19 Page____Line____Reason_____

20 From_____to_____

21 Page____Line____Reason_____

22 From_____to_____

23 Page____Line____Reason_____

24 From_____to_____

25

Kristin Hendrix - October 27, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

--o0o--

HIGHLAND CAPITAL MANAGEMENT,)
L.P.,)
Plaintiff,)
vs.) No. 21-03004-sgj
HIGHLAND CAPITAL MANAGEMENT FUND)
ADVISORS, L.P.,)
Defendants.)

DEPOSITION OF
KRISTIN HENDRIX
October 27, 2021

DEPOSITION OF KRISTIN HENDRIX, produced as a
witness, duly sworn by me via videoconference at the
instance of the DEFENDANTS, was taken in the
above-styled and numbered cause on October 27, 2021,
from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,
CSR, RPR, in and for the State of Texas, reported by
computerized machine shorthand, at 500 North Akard
Street, 38th Floor, Dallas, Texas.

Kristin Hendrix - October 27, 2021

APPEARANCES

MUNSCH, HARDT, KOPF & HARR, PC, 500 North Akard Street, Suite 3800, Dallas, TX 75201, represented by DAVOR RUKAVINA, Attorney at Law, appeared as counsel on behalf of the Defendants.

Email: drukavina@munsch.com

PACHULSKI, STANG, ZIEHL & JONES, 780 Third Avenue, 34th Floor, New York, NY 10017-2024, represented by JOHN A. MORRIS, Attorney at Law, appeared as counsel on behalf of the Plaintiff.

Email: jmorris@pszjlaw.com

STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.

Email: michael.aigen@stinson.com

Kristin Hendrix - October 27, 2021

| | | | |
|----|-------------------------------------|-------------------------------------|------|
| 1 | INDEX | | |
| 2 | | | PAGE |
| 3 | Examination by MR. RUKAVINA | | 6 |
| 4 | Examination by MR. AIGEN | | 94 |
| 5 | Further Examination by MR. RUKAVINA | | 110 |
| 6 | Examination by MR. MORRIS | | 111 |
| 7 | | | |
| 8 | EXHIBITS | | PAGE |
| 9 | | | |
| 10 | Exhibit 1 | Promissory Note, 5M, May 3 | 30 |
| 11 | | | |
| 12 | Exhibit 2 | Promissory Note, 2.4M, May 2 | 30 |
| 13 | | | |
| 14 | Exhibit 3 | Email from David Klos, May 2, 2019, | 31 |
| 15 | | HCMLP to HCMFA loan | |
| 16 | | | |
| 17 | Exhibit 4 | Promissory Note, 5M, May 3 | 42 |
| 18 | | | |
| 19 | Exhibit 5 | Promissory Note, 2.4M, May 2 | 42 |
| 20 | | | |
| 21 | Exhibit 6 | Promissory Note, 5M, May 3 | 43 |
| 22 | | | |
| 23 | Exhibit 7 | Promissory Note, 2.4M, May 2 | 43 |
| 24 | | | |
| 25 | Exhibit 8 | Info, HCMF loan 05.03.2019 | 56 |

Kristin Hendrix - October 27, 2021

| | | | |
|----|------------|-------------------------------------|----|
| 1 | Exhibit 9 | Info, HCMF loan 05.02.2019 | 56 |
| 2 | | | |
| 3 | Exhibit 10 | Email from Scott Ellington, Dec 2, | 59 |
| 4 | | 2020, HCM - HCMFA financial | |
| 5 | | statements | |
| 6 | | | |
| 7 | Exhibit 11 | Email from John Morris to | 62 |
| 8 | | James Seery, Jan 6, 2021, | |
| 9 | | HCM information request | |
| 10 | | | |
| 11 | Exhibit 12 | Letter, Dec 3, 2020, Demand on | 65 |
| 12 | | Promissory Notes | |
| 13 | | | |
| 14 | Exhibit 13 | Promissory Note, \$30,746,812.33, | 72 |
| 15 | | May 31 | |
| 16 | | | |
| 17 | Exhibit 14 | NPA \$30.7M | 76 |
| 18 | | | |
| 19 | Exhibit 15 | HCMLP Notes Receivable | 83 |
| 20 | | | |
| 21 | Exhibit 16 | Email from Frank Waterhouse to | 85 |
| 22 | | Lauren Thedford, Oct 6, 2020, 15(c) | |
| 23 | | follow-up | |
| 24 | | | |
| 25 | | | |

Kristin Hendrix - October 27, 2021

1 Exhibit 17 Email from James Seery to 88
2 James Dondero, Jan 7, 2021, demand
3 on promissory note
4

5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90
6 2021, NexPoint Note to HCMLP
7
8
9
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12
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Kristin Hendrix - October 27, 2021

1 KRISTIN HENDRIX,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 Q. (BY MR. RUKAVINA) Good morning. If you'll
5 state your name.

6 A. Kristin Hendrix.

7 Q. We're doing this both ways. You're on the
8 Zoom remotely and they can see you, but I would ask
9 that you and I maintain eye contact. Of course, if
10 someone is asking you on the Zoom, then maintain
11 contact with them, if that's okay with you.

12 A. Sure.

13 Q. Have you been deposed before?

14 A. No.

15 Q. So I'm sure your counsel explained to you,
16 but very quickly, you understand that you're testifying
17 under oath and penalty of perjury as though you were in
18 a court of law?

19 A. Yes.

20 Q. And you understand my job is to ask clear
21 questions that you understand?

22 A. Yes.

23 Q. And if for whatever reason you don't
24 understand my questions, please let me know or ask me
25 to rephrase; otherwise, I'm going to assume that you

Kristin Hendrix - October 27, 2021

1 understood my question; okay?

2 A. Yeah.

3 MR. MORRIS: Objection.

4 Q. (BY MR. RUKAVINA) Sometimes Counsel will
5 make objections. Unless he instructs you not to
6 answer, you're still required to answer my questions.

7 A. Okay.

8 Q. Now, in preparation for this deposition, did
9 you read the deposition transcript or any part of it of
10 Frank Waterhouse?

11 A. I did not.

12 Q. Did anyone provide you a synopsis or summary
13 of it?

14 A. Maybe a few bits and pieces, but...

15 MR. RUKAVINA: Off the record for a second.
16 (Off the record.)

17 Q. (BY MR. RUKAVINA) What do you mean bits and
18 pieces?

19 A. I don't recall anything specific that was
20 said, other than it was very long.

21 Q. Did you talk to Frank Waterhouse about it?

22 A. Did not.

23 Q. Other than Highland's legal counsel, did you
24 talk to anyone else about -- or -- strike that.

25 Other than Highland's legal counsel, did you

Kristin Hendrix - October 27, 2021

1 talk to anyone about Frank Waterhouse's deposition from
2 last week?

3 A. I did not.

4 Q. Did you review -- strike that.

5 Did you see any of the video of
6 Mr. Waterhouse's deposition?

7 A. Nope.

8 Q. Same questions now for Mr. Seery, S-e-e-r-y.

9 Did you read any portion or the whole of
10 Mr. Seery's deposition from last week?

11 A. I did not.

12 Q. See any of the video?

13 A. No.

14 Q. Did you see any synopsis or summary of his
15 deposition?

16 A. No.

17 Q. Did you talk to him about his deposition?

18 A. I did not.

19 Q. Other than talking to Highland's counsel, did
20 you talk to anyone about Mr. Seery's deposition?

21 A. No.

22 Q. Other than talking to Highland's counsel, did
23 you talk to anyone about your deposition today?

24 A. Just John Morris and Dave Klos.

25 Q. When did you talk to Mr. Klos, K-l-o-s?

Kristin Hendrix - October 27, 2021

1 A. First time about this was last Friday. And
2 then again Monday this week. And yesterday. And this
3 morning.

4 Q. Friday was there any lawyer present during
5 your discussion with Mr. Klos?

6 A. Yes, every time Mr. Morris was present.

7 MR. RUKAVINA: Is it your position that those
8 four discussions would be privileged, Counsel?

9 MR. MORRIS: Yes.

10 MR. RUKAVINA: Then we'll move on.

11 Q. (BY MR. RUKAVINA) So we've established the
12 four times you talked to Mr. Klos with counsel present.
13 Did you do anything else related to or in preparation
14 for today's deposition?

15 A. Yes, probably went through and reviewed some
16 emails, documentation that I may have had that I need
17 to refresh memory on.

18 Q. These documents and emails that you might
19 have reviewed, did you supplementally provide them to
20 counsel or anyone else?

21 A. Yes.

22 Q. This would have been in the last week or
23 10 days?

24 A. Yes.

25 Q. Prior to the last week or 10 days, are you

Kristin Hendrix - October 27, 2021

1 aware that my office served requests for production on
2 Highland?

3 A. Yes.

4 Q. And did you do anything prior to the last
5 week or 10 days to try to search both your personal
6 records and corporate records for any responsive
7 documents?

8 A. Not that I recall.

9 Q. Is that something that you understand legal
10 counsel was charged with?

11 A. Yes.

12 Q. Let's go briefly now about your background,
13 please.

14 Where do you live?

15 A. I live in Denton, Texas.

16 Q. And what is your date of birth, please?

17 A. January 26, 1982.

18 Q. And walk me through your educational
19 background, starting with any postsecondary, if any,
20 schooling or college or anything like that.

21 A. Sure. Graduated in 2004 from the University
22 of North Texas with a degree in finance. Went on to
23 get my MBA from SMU in 2009. And then went further and
24 got my CPA license I believe in 2015.

25 Q. In the state of Texas?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And has your CPA license been current since
3 then?

4 A. Sure has.

5 Q. Have you faced any kind of disciplinary
6 action as a CPA?

7 A. I have not.

8 Q. Now, please walk me through your work
9 history. Let's say starting with after you graduated
10 college.

11 A. Sure. December of 2005, which was shortly --
12 sorry, 2004, shortly after I graduated from
13 North Texas, I started at Highland. It was my first
14 real job out of college. I have been there ever since,
15 almost 17 years now.

16 Have worked in the corporate accounting
17 department the entire time. Started off as the AP
18 associate, and worked my way up over the years and
19 currently am the controller.

20 Q. So even when you were getting your MBA and
21 CPA you were employed by Highland?

22 A. Yes.

23 Q. Impressive. You're the controller today you
24 mentioned?

25 A. Yes.

Kristin Hendrix - October 27, 2021

1 Q. That's -- when did you become the controller,
2 sometime February or March of this year?

3 A. Yes.

4 Q. Before you became the controller, what was
5 your role at Highland?

6 A. Right before that I was assistant controller.
7 That was I believe April of 2020. Before that, the
8 senior accounting manager, and I held that position for
9 years.

10 Q. So in May of 2019 would you have been the
11 senior -- you said senior account?

12 A. Senior accounting manager I believe was my
13 title.

14 Q. And would that have been your title in May of
15 2017?

16 A. Yes, I believe so.

17 Q. And let's focus now on May 2019 as the senior
18 accounting manager. How would you describe your role
19 at Highland in May of 2019? What were your duties?

20 A. Sure. I helped with treasury management
21 function, cash forecasts and things like that. And
22 oversaw the financial reporting from the last batch of
23 AP to all the way to financials and reporting on
24 audits.

25 Q. Who did you report to in May of 2019?

Kristin Hendrix - October 27, 2021

1 A. David Klos.

2 Q. What was Mr. Klos' title to your
3 understanding back then?

4 A. I believe he was the controller.

5 Q. And do you have an understanding as to who
6 Mr. Klos reported to back then?

7 A. Yes, Frank Waterhouse.

8 Q. Frank Waterhouse. Who was he in May of 2019?

9 A. The CFO.

10 Q. Is Mr. Klos still with Highland today?

11 A. He is.

12 Q. What is his role now?

13 A. He's now CFO.

14 Q. You mentioned treasury management as of 2019,
15 May. What do you mean by treasury management? What is
16 that?

17 A. Generally speaking, we -- it's not just me as
18 one person. We have checks and balances.

19 My team would be in charge of sending out
20 payments, reconciling bank statements, making sure
21 money is in the right accounts, creating cash forecasts
22 and reporting on those every week with the CFO and
23 oftentimes the CEO.

24 Generally that's everything that fell under
25 the umbrella.

Kristin Hendrix - October 27, 2021

1 Q. And would your description of treasury
2 management be the same for the December 2020 period?

3 A. Yes.

4 Q. Who at Highland or which group at Highland in
5 December of 2020 would have been responsible for noting
6 that there are certain bills that need to be paid in
7 the near or subsequent future.

8 By way of, let's say, accounts payable or
9 promissory notes or taxes or anything like that?

10 A. Can you repeat your question.

11 Q. Sure. So obviously, Highland was a pretty
12 sophisticated business; correct?

13 A. Yeah.

14 MR. MORRIS: Objection to the form.

15 Q. (BY MR. RUKAVINA) And had various accounts
16 payable; right?

17 A. Yes.

18 Q. And it had maybe, let's just say, certain
19 note obligations that it had to pay from time to time;
20 correct?

21 MR. MORRIS: Objection to the form of the
22 question. Do you mean Highland Capital?

23 MR. RUKAVINA: I mean Highland Capital
24 Management; correct, I'm sorry. The debtor.

25 Q. (BY MR. RUKAVINA) Can we say the debtor?

Kristin Hendrix - October 27, 2021

1 A. Yes, you can say the debtor.

2 Q. So when I say the debtor and you say the
3 debtor we understand each other to mean Highland
4 Capital Management, comma, LP; correct?

5 A. Correct.

6 Q. I apologize. In the December 2020 period, I
7 would imagine that the debtor had its own -- that
8 was -- strike that.

9 We'll cut to the chase.

10 In December of 2020, the debtor was providing
11 services to various other entities affiliated with
12 Mr. Dondero; correct?

13 A. Correct.

14 Q. That would have included NexPoint Advisors,
15 LP?

16 A. Correct.

17 Q. And you're aware that NexPoint Advisors was
18 the obligor on at least one promissory note to the
19 debtor; correct?

20 A. Correct.

21 Q. And did the debtor in December 2020 provide
22 so-called treasury management services to NexPoint
23 Advisors?

24 MR. MORRIS: Objection to the form of the
25 question.

Kristin Hendrix - October 27, 2021

1 THE WITNESS: Yes.

2 Q. (BY MR. RUKAVINA) As part of that, in
3 December 2020, would it have been employees of the
4 debtor that would have scheduled for potential payment,
5 subject to approval by NexPoint, NexPoint's future
6 obligations as they were coming due?

7 A. Yes, we would have scheduled, only with
8 approval.

9 Q. And would that have included NexPoint's
10 obligations on the promissory note to Highland?

11 A. Yes.

12 Q. Back to your background briefly.
13 Do you have any legal training at all?

14 A. I do not.

15 Q. Do you have any courses, have you taken any
16 courses in drafting promissory notes?

17 A. No.

18 Q. Do you believe that your expertise as a
19 certified public accountant gives you any greater
20 qualification than anyone else to prepare a promissory
21 note?

22 MR. MORRIS: Objection to the form of the
23 question.

24 THE WITNESS: No.

25 Q. (BY MR. RUKAVINA) Have you ever prepared or

Kristin Hendrix - October 27, 2021

1 drafted a promissory note?

2 A. That term is probably used loosely. I have
3 not completely drafted a promissory note from scratch,
4 no.

5 Q. And we'll go into the details. Fair to say
6 that you have taken a form promissory note and revised
7 it?

8 A. Absolutely.

9 Q. Was this part of your job in May of 2019 at
10 Highland?

11 A. Yes.

12 Q. Going back to the May 2019 time frame, were
13 you part of a particular group at Highland, like
14 accounting or legal or compliance?

15 A. Yes, corporate accounting.

16 Q. Corporate accounting. That's what you
17 described before about treasury management and
18 projections and forecasts?

19 A. Yes.

20 Q. In May of 2019, was it the practice at
21 Highland that corporate accounting would be responsible
22 for drafting intercompany promissory notes?

23 A. Not necessarily drafting, but updating a
24 draft that had been previously produced and provided by
25 our legal team, yes.

Kristin Hendrix - October 27, 2021

1 Q. And Highland in May -- the debtor in May of
2 2019 did have a legal department?

3 A. Yes.

4 Q. Kind of like the corporate accounting, there
5 was a separate legal department; correct?

6 A. Correct.

7 Q. And who would have been in charge of that
8 department in May of 2019?

9 A. Scott Ellington, E-l-l-i-n-g-t-o-n.

10 Q. In May of 2019 or by May of 2019 was there
11 any practice at Highland as to whether its legal
12 department would be involved with the drafting or
13 execution of any intercompany promissory notes?

14 MR. MORRIS: Objection to the form of the
15 question.

16 THE WITNESS: It depends on the note.

17 Q. (BY MR. RUKAVINA) What did it depend on?

18 A. Our typical practice is if we have a loan
19 with certain affiliates that it's a demand note. We
20 have a template that we have used for years that was
21 created by either our internal legal team or an outside
22 law firm, I'm not sure which.

23 The typical practice is always updating a few
24 things on that template, getting it executed, and
25 filing it in our audit folders.

Kristin Hendrix - October 27, 2021

1 Q. By updating, what do you mean?

2 A. There's a few things that would need
3 updating, the date.

4 Q. Maker?

5 A. Maker.

6 Q. Amount?

7 A. The dollar amount, the interest rate.

8 Q. And is it your testimony that the corporate
9 accounting group would do these things on its own
10 without necessarily the involvement of the legal group?

11 MR. MORRIS: Objection to the form of the
12 question.

13 THE WITNESS: Generally, yes.

14 Q. (BY MR. RUKAVINA) Do you have any memory in
15 or before May of 2019 if the corporate -- I'm sorry, if
16 the legal group became involved in drafting or
17 executing any prior intercompany promissory notes?

18 A. Yes.

19 Q. Explain to me what you remember about that.

20 A. I do know that they were involved with
21 drafting restructured notes. So taking demand notes
22 and turning them into a 30-year amort note.

23 That was in 2017. I know for sure that they
24 were involved in that because it was something
25 different. We weren't just updating a demand note.

Kristin Hendrix - October 27, 2021

1 Q. Is it your testimony that to the best of your
2 recollection by May of 2019 and in May of 2019 it would
3 have been the corporate accounting group that would
4 have handled routine intercompany demand notes?

5 A. Yes.

6 Q. And you can think of more than one instance
7 on which that happened?

8 A. Yes.

9 Q. And this is not a memory test, but going back
10 in time can you try to give an estimate of what year
11 that first started happening, that the corporate
12 accounting would handle the drafting or execution of
13 intercompany demand notes?

14 A. As far as I can remember.

15 Q. Is it your testimony that as -- maybe even
16 going back as far as 2005 there were intercompany
17 demand notes?

18 A. Yes.

19 Q. I don't know how to ask this question, but
20 was this a significant thing in corporate accounting or
21 just another routine deal when you handled demand
22 notes?

23 MR. MORRIS: Objection to the form of the
24 question.

25 THE WITNESS: This is a routine job duty that

Kristin Hendrix - October 27, 2021

1 we routinely did.

2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do
3 you remember any maker on these intercompany demand
4 notes actually being required to pay a demand note, in
5 other words, Highland making demand?

6 A. Not that I can specifically recall.

7 Q. Do you have any recollection as to what
8 happened to these intercompany demand notes over the
9 years between 2005 and 2019?

10 A. Yeah. Typically anytime specifically Jim
11 Dondero would need to move money between related
12 parties, he would pay down -- when I say him, he would
13 have us in corporate accounting move money around, pay
14 off notes, reissue new notes somewhere else.

15 So a way to move money around between his
16 entities.

17 Q. So let's use just hypotheticals here so that
18 I'm not trying to pin you down to any specific fact.

19 But between 2005 and 2019, is it fair to say
20 that if some Dondero entity that's not the debtor
21 needed money and the debtor had money, then Dondero
22 would have the debtor lend money to that entity on a
23 demand note basis?

24 A. So long as they have the cash available to do
25 so.

Kristin Hendrix - October 27, 2021

1 Q. "They" being the debtor?

2 A. Debtor, yes.

3 Q. And is it fair to say, then, again
4 hypothetically without any specifics, that if the
5 debtor maybe from time to time needed money and one of
6 these other entities had cash, then Dondero would cause
7 that other entity to pay down the demand note?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: Can you repeat that.

11 Q. (BY MR. RUKAVINA) Sure. So I think you
12 mentioned that from time to time these entities would
13 pay down these demand notes?

14 A. To the debtor?

15 Q. To the debtor.

16 A. Yes.

17 Q. And is that, hypothetically again, is that
18 because on occasion the debtor might have needed cash
19 and these entities had the cash, so Dondero would have
20 them pay back the note?

21 MR. MORRIS: Objection to the form of the
22 question.

23 THE WITNESS: Yes, that could be a reason.

24 Q. (BY MR. RUKAVINA) Can you think of any other
25 reason in those 14 years?

Kristin Hendrix - October 27, 2021

1 A. If the debtor needed cash to lend to another
2 entity.

3 Q. I see. So again, it's all one big happy
4 family, and whoever needed cash, the cash moved around;
5 correct?

6 A. Correct.

7 Q. Was it Mr. Dondero that basically was the
8 only deciding person in each instance that you're aware
9 of in those 14 years as to when a note would be made or
10 repaid?

11 A. I can't answer specifically to that. Most of
12 my direction came from our CFO at the time,
13 Frank Waterhouse. So what conversations he would have
14 with Jim Dondero, I can't answer to that. But I would
15 suspect so, yes.

16 Q. And in May of 2019 or by May of 2019, did you
17 communicate personally, by email or telephone, in
18 person, periodically with Jim Dondero?

19 A. I can't say periodically, no.

20 Q. Well, I'm not trying to put words in your
21 mouth. Is it fair to say that you kind of -- your
22 communications stopped with Mr. Waterhouse and
23 Waterhouse communicated with Dondero, as opposed to you
24 regularly communicating with Dondero?

25 A. That's typical, yes.

Kristin Hendrix - October 27, 2021

1 Q. Can you think of any instances in which
2 Mr. Dondero gave you any instructions or you came to
3 him seeking any instructions, without some intermediary
4 between the two of you?

5 A. No, usually Frank was present.

6 Q. Would you categorize Mr. Waterhouse as kind
7 of guarding with jealousy his access to Mr. Dondero?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: No.

11 Q. (BY MR. RUKAVINA) What kind of boss was he
12 in May of 2019? Was he laid back, or was he a jerk?
13 Was he demanding? How would you characterize him in
14 May of 2019?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: I would say he was a good boss.

18 Q. (BY MR. RUKAVINA) You think he was competent
19 as far as his job went?

20 A. Yes, very competent.

21 Q. Do you think he was competent as far as his
22 job went in December of 2020?

23 A. Yes.

24 Q. January 2021?

25 A. Yes.

Kristin Hendrix - October 27, 2021

1 Q. Was he patient and understanding as a boss?

2 A. Yes.

3 Q. Okay. Was he ever condescending or rude to
4 anyone in your presence?

5 A. No.

6 Q. So you're the controller today at Highland,
7 the debtor, the reorganized debtor; right?

8 A. Yes.

9 Q. And who do you report to? You mentioned
10 Mr. Klos is the CFO?

11 A. Yes.

12 Q. And do you also report to Mr. Seery?

13 A. Yes, I think everybody does.

14 Q. And I don't need to know details, but I take
15 it you're on a salary from reorganized Highland?

16 A. Yes.

17 Q. Is any part of your compensation merit or
18 bonus based?

19 A. It could potentially be.

20 Q. Have you had any discussions with Mr. Seery
21 or Mr. Klos about some sort of bonus compensation?

22 A. Yes.

23 Q. Has anything been agreed to?

24 A. Yes.

25 Q. And again, I don't need to know the exact

Kristin Hendrix - October 27, 2021

1 numbers. What would your bonus compensation consist
2 of? How would it be decided?

3 A. It's actually -- was decided when I agreed to
4 stay on the Highland team back in February 2021, so
5 it's in my employment agreement.

6 Q. So what's your bonus compensation?

7 A. I'm not sure I understand what you're asking.

8 Q. So is the bonus discretionary on the part of
9 Highland?

10 A. No, it's a set amount.

11 Q. And what triggers it or governs the set
12 amount?

13 A. Just it gets paid out on a certain date of
14 the year. It's very straightforward, set out in my
15 employment agreement.

16 Q. Is it irrespective of the performance of the
17 reorganized debtor?

18 A. Yes.

19 Q. So why do you call it a bonus instead of base
20 compensation?

21 A. That's what it's called in my agreement.

22 Q. So your base compensation and your bonus,
23 it's your testimony, you're going to earn it
24 irrespective of whether reorganized Highland does good
25 or bad with respect to its profitability?

Kristin Hendrix - October 27, 2021

1 A. Correct.

2 Q. And how Highland, reorganized Highland
3 collects these promissory notes is going to play no
4 part in your base and bonus compensation to your
5 understanding; is that correct?

6 A. To my knowledge, yes.

7 Q. So you have no direct or indirect stake in
8 the outcome of these litigations?

9 A. No.

10 Q. And you understand that I represent HCMFA and
11 NexPoint?

12 A. Yes.

13 Q. And these court reporters are not familiar
14 with some of our terminology. NAP [verbatim], if we
15 say that, that means NexPoint; right?

16 A. Uh-huh.

17 Q. You have to say yes or no.

18 A. Yes, NPA, NexPoint.

19 Q. NPA. And when we say NexPoint, you and I are
20 meaning NexPoint Advisors, LP; right?

21 A. Yes.

22 Q. And when we say HCMFA, we're meaning Highland
23 Capital Management Fund Advisors, LP, yes?

24 A. Yes.

25 Q. What is your understanding of the two

Kristin Hendrix - October 27, 2021

1 lawsuits, the one against HCMFA and the one against
2 NexPoint, that you're being deposed on today?

3 MR. MORRIS: Objection to the form of the
4 question.

5 Q. (BY MR. RUKAVINA) Who is suing who and for
6 what?

7 A. I don't know all the details.

8 Q. So we've established that you've discussed
9 these lawsuits in the last week or a little bit more
10 with legal counsel. I don't want to talk about that.

11 Prior to these recent discussions, did you
12 have any discussions with anyone at Highland about its
13 lawsuits against HCMFA and NexPoint on promissory
14 notes?

15 A. Repeat that again.

16 Q. Sure. So remember we're excluding the recent
17 discussions in the last week or 10 days with counsel;
18 right?

19 A. Okay.

20 Q. Are you aware that in January of 2021 the
21 debtor sued NexPoint to collect on a promissory note?

22 A. I'm aware that demand notices were sent.

23 Q. So until recently you weren't aware that a
24 lawsuit had been filed?

25 A. There's a lot of lawsuits filed. I can't

Kristin Hendrix - October 27, 2021

1 keep track of what is what or what we're talking about
2 at certain times.

3 Q. But you have no distinct memory of that?

4 A. Correct.

5 Q. And same question for the lawsuit that the
6 debtor filed against HCMFA in January.

7 Do you have any specific memory of that
8 lawsuit having been filed?

9 A. Not specifically.

10 Q. You mentioned that you're aware that on or
11 before January 2021, demand letters had been sent?

12 A. Yes.

13 Q. Did you play any role in either drafting
14 those demand letters or the decision to send them?

15 A. No.

16 Q. So going back to my question about these
17 lawsuits, do you have any memory of anyone asking
18 you -- again, excluding the last week or two.

19 Do you have any memory of anyone asking you
20 to do anything with respect to either or both of these
21 lawsuits?

22 A. No.

23 Q. You have no memory of Mr. Waterhouse,
24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any
25 background information or your input at all on these

Kristin Hendrix - October 27, 2021

1 two lawsuits?

2 MR. MORRIS: Better not have been --

3 THE WITNESS: No.

4 Q. (BY MR. RUKAVINA) Who did I say? Did I
5 misspeak? Okay.

6 Now we're going to have some exhibits here.

7 And do you have the labels?

8 Let's take a minute break off the record.

9 (Off the record.)

10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to
11 provide to you a promissory note in the original
12 principal amount of \$5 million from HCMFA. This is the
13 PDF version of this as filed with the Court for
14 collection. It's going to be Exhibit 1.

15 (Whereupon, Exhibit 1 was marked for
16 identification.)

17 Q. (BY MR. RUKAVINA) Before you look at
18 Exhibit 1, I'm going to do the same thing for
19 Exhibit 2, which is a promissory note from HCMFA for
20 \$2.4 million, dated May 2, 2019.

21 (Whereupon, Exhibit 2 was marked for
22 identification.)

23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these
24 are the PDF versions of these notes as filed with the
25 Court. Sitting here today, do you remember anything

Kristin Hendrix - October 27, 2021

1 about either or both of these two promissory notes?

2 A. Sure, yes.

3 Q. What do you remember?

4 A. I remember seeing them because I've recently
5 looked at them. I see them all the time in our loan
6 tracking spreadsheets. My team would have been
7 responsible for the whole process that I explained
8 before when it comes to a promissory note.

9 Q. And --

10 MR. MORRIS: Are you finished?

11 THE WITNESS: Yes.

12 Q. (BY MR. RUKAVINA) And we have an email here
13 that might give some more context to that if I can find
14 it here.

15 This will be Exhibit 3. This is an email
16 from David Klos to corporate accounting dated May 2,
17 2019.

18 (Whereupon, Exhibit 3 was marked for
19 identification.)

20 Q. (BY MR. RUKAVINA) Do you see this email,
21 ma'am?

22 A. Yes.

23 Q. Okay. Corporate accounting, would that email
24 group have included you?

25 A. Yes.

Kristin Hendrix - October 27, 2021

1 Q. And this email says, Kristin, can you or
2 Hayley. Do you think that Kristin was you?

3 A. I do.

4 Q. Do you remember receiving this email?

5 A. Not explicitly.

6 Q. So it says Blair. Who would Blair be?

7 A. Blair was our AP associate.

8 Q. What is her last name?

9 A. At this time it would have been Roeber,
10 R-o-e-b-e-r.

11 Q. Okay. And did it subsequently change?

12 A. Yes, it's now Hillis, H-i-l-l-i-s.

13 Q. Please send \$2.4 million from HCMLP to HCMFA.
14 This is a new interco loan. Kristin, can you or Hayley
15 please prep a note for execution. I'll have further
16 instructions later today, but please process this
17 payment as soon as possible.

18 Did I read that correctly?

19 A. Yes.

20 Q. Do you have any memory of whether this email
21 relates to Exhibit 2, the \$2.4 million promissory note?

22 A. It seems like it does, same date, same
23 amount.

24 Q. Do you have any memory, or in reviewing your
25 files did you see any similar email or document that

Kristin Hendrix - October 27, 2021

1 would have related to Exhibit 1, the \$5 million
2 promissory note?

3 A. Yes. I believe there's another email for
4 that one.

5 Q. And do you believe that you provided that to
6 counsel?

7 A. Yes.

8 Q. Recently or some time ago?

9 A. Well, I don't think I provided it, so I'm not
10 sure when they got it. I know it has been provided.

11 Q. You know that it has?

12 A. Uh-huh.

13 Q. How do you know?

14 A. Because I've seen it.

15 Q. In the production that was produced to me?

16 A. Yes.

17 Q. And also from a David Klos?

18 A. This one, or on the -- when I say this one,
19 on the \$2.4 million or the 5-?

20 Q. On the \$5 million note.

21 A. I'm not sure.

22 Q. Okay. Let me make sure I understand you
23 correctly.

24 Sitting here today you believe that there is
25 another email referencing the \$5 million loan that has

Kristin Hendrix - October 27, 2021

1 been produced to my office?

2 A. Yes. I believe so.

3 Q. Okay. And going off memory, did it kind of
4 say the same thing as this Exhibit 3 except that it
5 referenced \$5 million?

6 MR. MORRIS: Objection to the form of the
7 question.

8 THE WITNESS: Generally, should have said the
9 similar situation, yeah.

10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is
11 a new interco loan, for Exhibit 3. Other than what he
12 told you, that this is an intercompany loan, did anyone
13 else tell you or did you have any other information on
14 May 2, 2019 that this was a loan?

15 A. I don't specifically recall these
16 conversations, but I can tell you our normal practice
17 would be we would either likely be in a cash meeting --
18 and I say "we." Would have been myself, Dave Klos,
19 Frank Waterhouse, potentially even Jim Dondero.

20 But I don't recall conversations on this
21 specific date. But general practice is we would talk
22 about it.

23 Oftentimes, Frank would either call Dave or I
24 or stop by and tell us that, we need to send money to
25 an affiliate, paper up a new loan, let's get a wire out

Kristin Hendrix - October 27, 2021

1 the door, is typically how this works.

2 Q. Is the answer generally the same for the
3 \$5 million note?

4 A. Yes.

5 Q. So is it fair to say that typically,
6 obviously not every time, but typically your corporate
7 accounting group when it would see intercompany
8 transfers in large amounts would believe that they were
9 loans?

10 MR. MORRIS: Objection to the form of the
11 question.

12 THE WITNESS: Typically they were loans.
13 There's not really another way to get money from one
14 entity to another. And if they were papered as a loan,
15 that means we were told to set it up that way.

16 Q. (BY MR. RUKAVINA) What do you mean papered
17 as a loan? Aren't you papering it as a loan when
18 someone makes the promissory note?

19 A. Yes, because we're told by somebody to do
20 that.

21 Q. And in this instance, Mr. Klos on Exhibit 3
22 told the group that this was a loan; right?

23 A. Correct. But he would have spoken with
24 Frank Waterhouse or Jim Dondero prior to that, before
25 telling anybody to do that.

Kristin Hendrix - October 27, 2021

1 Q. Okay. And do you have any knowledge that he
2 did speak to Mr. Waterhouse or Mr. Dondero before
3 sending this email?

4 A. Again, I don't have specific knowledge on the
5 exact conversations, but that's always how it has
6 worked.

7 Q. That's how it was for 14 or 15 years;
8 correct?

9 A. Yes.

10 Q. But you're logically assuming that it
11 happened here. You don't know that it happened here;
12 correct?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: I would have to be fairly
16 certain that it did, even though I can't recall
17 specific conversations.

18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about
19 who told him that this is a new intercompany loan on
20 Exhibit 3?

21 A. No. It's quite possible I was involved in
22 the conversation. I reported to him. I wouldn't
23 question his authority.

24 Q. Did you ask Mr. Klos who told him that the
25 \$5 million deal was also an intercompany loan?

Kristin Hendrix - October 27, 2021

1 A. I did not ask that specific question that I
2 can recall.

3 Q. Did you ask Mr. Waterhouse whether either of
4 these transactions were loans?

5 A. I'm sure Mr. Waterhouse is the one that told
6 us they were loans. We wouldn't just paper up a loan,
7 send money out and call it a loan and account for it
8 that way, unless somebody specifically told us.

9 Q. Do you have any memory of Mr. Waterhouse
10 orally or in writing or email or in any way, shape, or
11 form on or about May 2 or 3, 2019 telling you that the
12 2.4 million or \$5 million transfers were intercompany
13 loans?

14 A. No specific knowledge of exact conversations,
15 but I'm certain that those conversations were had
16 because that's the only way that we would have papered
17 up a loan, sent money out as a loan, had them on our
18 financials for two years.

19 Q. So you're saying that this email, Exhibit 3,
20 from Mr. Klos was not enough, that there would have
21 been other things that happened to make you and other
22 people in your group confident that these were loans?

23 A. Yes.

24 Q. And these other things would have been in
25 person or by email?

Kristin Hendrix - October 27, 2021

1 A. Most likely in person via phone call.

2 Q. Okay. So again, you have no specific memory
3 of it, but based on the 14-year pattern and conduct you
4 believe that you would have discussed these two
5 transfers with Mr. Waterhouse and he would have told
6 you these are loans?

7 MR. MORRIS: Objection to the form of the
8 question.

9 THE WITNESS: Correct.

10 Q. (BY MR. RUKAVINA) And then would he have
11 told you to take care of the promissory notes, or was
12 that Mr. Klos here in Exhibit 3?

13 A. It could have been both. It's clearly Dave
14 in this email, but Frank could have also said that to
15 me.

16 Q. Now, do you -- strike that.

17 In May of 2019, did you know or were you told
18 why these \$7.4 million were being transferred from the
19 debtor to HCMFA?

20 A. Yes. I do have recollection that -- I do
21 know that there were two big events in May 2019.
22 2.4 million was related to a TerreStar NAV error, with
23 one of the funds advised by HCMFA. That's Global
24 Allocation Fund.

25 Similar with the \$5 million loan. There was

Kristin Hendrix - October 27, 2021

1 a consent fee that the advisor of the Global Allocation
2 Fund had promised to pay to shareholders of that fund,
3 and it was in the amount of \$5 million roughly.

4 So both of these loans were for those
5 purposes respectfully.

6 Q. And were you in May of 2019 also aware that
7 in addition to the \$2.4 million, there was another more
8 than \$5 million paid to that fund by HCMFA's insurer as
9 compensation for the NAV error?

10 A. By the insurance company, yes.

11 Q. So the \$7.4 million, you understood then was
12 a loan as opposed to compensation to HCMFA?

13 A. Yes.

14 Q. Okay. Did you understand in May of 2019 that
15 it had been the debtor and its valuation team that
16 caused that NAV error?

17 MR. MORRIS: Objection to the form of the
18 question.

19 THE WITNESS: I can't answer that. I was not
20 involved with the activities leading up to the NAV
21 error.

22 Q. (BY MR. RUKAVINA) How do you know that the
23 \$7.4 million were being transferred for the NAV error
24 and consent fee?

25 A. Because I do know about both of those

Kristin Hendrix - October 27, 2021

1 instances and I do know that HCMFA needed to pay these
2 dollar amounts for both of those.

3 Q. And you knew that in May of 2019?

4 A. Yes.

5 Q. How did you know that in May of 2019?

6 A. It was lots of discussions had been going on
7 around both of these issues for months. These weren't
8 surprises to anybody.

9 Q. So although you weren't involved directly
10 with the NAV error issues, it was more or less common
11 knowledge in your accounting group?

12 A. Correct.

13 Q. Do you have any knowledge at all as to
14 whether Mr. Dondero decided to transfer these
15 \$7.4 million not as a loan, but to compensate HCMFA for
16 the debtor's alleged liability?

17 A. Have not heard of that.

18 Q. Ever?

19 A. Never.

20 Q. But you also never heard Mr. Dondero say that
21 these \$7.4 million were a loan; correct?

22 A. That was not told to me directly.

23 Q. Again, you're logically assuming that based
24 on many instances of intercompany transfers in the
25 14 years prior to that?

Kristin Hendrix - October 27, 2021

1 MR. MORRIS: Objection to the form of the
2 question. Mischaracterizes the testimony.

3 THE WITNESS: Correct.

4 Q. (BY MR. RUKAVINA) I think you answered
5 correct?

6 A. Correct.

7 Q. And you mentioned that after these notes, you
8 saw them on internal financials and that reinforces
9 your view that these were loans?

10 A. Correct.

11 Q. But as of May 2 and 3, 2019, no one had told
12 you directly that these are loans?

13 MR. MORRIS: Objection to the form of the
14 question. It's in writing.

15 THE WITNESS: That's not what I'm saying at
16 all.

17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email
18 or emails, no one told you on May 2 or May 3, 2019 that
19 you remember today that these were loans?

20 A. It quite possibly could have been told to me
21 in addition to this email.

22 Q. I understand. You just have no memory of
23 that today; correct?

24 A. Correct.

25 Q. Is there anything that you can think of

Kristin Hendrix - October 27, 2021

1 sitting here today to refresh your memory on that
2 point?

3 A. I do not think so. I'm sure there was
4 conversation that unfortunately would not be in an
5 email.

6 Q. Now, we have the Word documents, the Word
7 version of these two promissory notes, and you're going
8 to have rely on me that I printed these out as
9 Mr. Morris sent to me. If I'm misleading you on that,
10 then I'm in trouble and your answers don't count.

11 So please assume that I didn't doctor these
12 and that I printed them out as they were prepared to
13 me; okay?

14 A. Yes.

15 Q. So Exhibit 4 will be the \$5 million note and
16 Exhibit 5 will be the 2.4 million.

17 (Whereupon, Exhibits 4 & 5 were marked for
18 identification.)

19 Q. (BY MR. RUKAVINA) Before I ask about 4 and
20 5, to be fair to you and refresh your memory, I'm going
21 to provide you printouts of the metadata, metadata --
22 I'm not sure how to better say that -- for both notes.

23 And again I'm representing to you that I
24 printed out the metadata without doctoring it, so
25 please assume that's true, and if it's not, your

Kristin Hendrix - October 27, 2021

1 answers don't count and I'm in trouble.

2 6 will be the \$5 million note, and 7 will be
3 the \$2.4 million note.

4 (Whereupon, Exhibits 6 & 7 were marked for
5 identification.)

6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5
7 are the Word documents. Do you have any memory of you
8 doing anything with respect to these two Word
9 documents?

10 A. I don't have specific memory, but generally
11 speaking, it was my job to update promissory note
12 templates and create promissory notes.

13 Q. So do you believe that -- we discussed
14 earlier that your group would have used a template and
15 that it would have made changes reflecting the maker,
16 amount, date, interest rate.

17 Do you believe you were the one with respect
18 to 4 and 5 that updated that template to create 4
19 and 5?

20 A. I'm sure that I was, yes.

21 Q. Well, Exhibit 6 -- do you know what metadata
22 is?

23 A. Sort of.

24 Q. What's your understanding of what metadata
25 is?

Kristin Hendrix - October 27, 2021

1 A. Just in context from speaking on it recently,
2 it's going to tell you who made changes to the
3 documents, is what I would assume.

4 MR. RUKAVINA: Go off the record for one
5 second.

6 (Off the record.)

7 Q. (BY MR. RUKAVINA) So a little bit of error
8 on my part. We'll have some more metadata, but we can
9 still talk about 6 and 7.

10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.
11 Do you recall or do you know who that person was?

12 A. I recognize the name, and it makes sense.
13 This says Strasburger is the company. I think he was
14 one of the lawyers that we had used at some point in
15 time.

16 Q. Strasburger is a law firm?

17 A. Yes.

18 Q. And then it says, so Exhibit 6 created May 3,
19 Exhibit 7 created May 2, modified, accessed. Does that
20 to the best of your understanding comport with when
21 Exhibits 4 and 5 were actually created?

22 A. Can you repeat that.

23 Q. Yeah. We'll wait for the rest of the
24 metadata. But let's go back to 4 and 5.

25 In and by May 2019 I think you mentioned that

Kristin Hendrix - October 27, 2021

1 it was your job to, I think you said update promissory
2 notes?

3 MR. MORRIS: Objection to the form of the
4 question.

5 Q. (BY MR. RUKAVINA) Let me take that question
6 back.

7 You testified earlier that your group would
8 have taken a template and used it to create or prepare
9 a new promissory note; right?

10 A. Right.

11 Q. How would you call that process? What word
12 would you use for that process?

13 A. Let's call it papering the loan.

14 Q. In May of 2019, was it your job to paper the
15 loan?

16 A. Yes.

17 Q. Would anyone else at the corporate accounting
18 group have been responsible to paper a loan?

19 A. At that time, I don't think so. I think I
20 was the one doing it.

21 Q. I think you mentioned that you think you
22 papered the loan, respecting Exhibits 4 and 5; correct?

23 A. Correct.

24 Q. You have no distinct present memory of
25 papering 4 and 5; correct?

Kristin Hendrix - October 27, 2021

1 A. Correct.

2 Q. Can you think of anyone else at the corporate
3 accounting group that would have papered 4 and 5?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: The only other person that
7 could have would either be Dave Klos or Hayley Eliason.

8 Q. (BY MR. RUKAVINA) What was Hayley's role in
9 May of 2019?

10 A. She was the accountant. I can't recall her
11 specific title.

12 Q. Now, in May of 2019 when you papered a loan,
13 would you have consulted with either internal or
14 external legal before finishing that loan or presenting
15 it for signature or anything else?

16 A. Not if it was just our standard demand note
17 that we already had a template on.

18 Q. So would it have been your general course in
19 May of 2019, if you prepared Exhibits 4 and 5, not to
20 seek advice from internal or legal before proceeding
21 with these notes?

22 A. With these two specific notes?

23 Q. Yes.

24 A. Yes.

25 Q. If we flip the page, I'll represent to you

Kristin Hendrix - October 27, 2021

1 that Mr. Waterhouse's signature there appears on the
2 Word document as an image.

3 A. Uh-huh.

4 Q. Do you have any memory of whether there was
5 an image that someone would have affixed of
6 Mr. Waterhouse's signature to promissory notes?

7 A. Yes. We typically always -- he was
8 completely fine with having documentations -- sorry,
9 having documents signed or executed with his
10 e-signature.

11 Q. Would these pictures of his signature have
12 been his e-signature in May of 2019?

13 A. Yes.

14 Q. So let's just clarify that because I don't
15 want there to be any confusion.

16 I know there's some computer programs out
17 there that are restrictive and have passwords before
18 any signature is printed. And then there's some people
19 that use a stamp or an image; right?

20 MR. MORRIS: Objection to the form of the
21 question.

22 Q. (BY MR. RUKAVINA) Are you following me?

23 A. I follow you.

24 Q. In May of 2019, did Mr. Waterhouse have any
25 specific program that would have to -- you would have

Kristin Hendrix - October 27, 2021

1 to go through before it would spit out his e-signature,
2 or was he fine with you and his staff using an image
3 like this?

4 A. He was fine with using his e-signature, and
5 what is on these documents was that exact e-signature.
6 So I don't know if he had -- I don't know how it was
7 created originally.

8 Q. The e-signature?

9 A. E-signature.

10 Q. Do you have any memory with respect to
11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific
12 approval to use his e-signature?

13 A. I don't have exact specific memory, same as
14 conversations on these loans. But he would have had to
15 approve this loan in the dollar amount, the day.

16 He would have been the one directing us to
17 create these loans. In past practice he has always
18 approved using his e-signature to execute documents.

19 Q. How would he have approved Exhibits 4 and 5?
20 By that, I mean by email or memorandum? How would he
21 have approved it in May of 2019?

22 MR. MORRIS: Objection to the form of the
23 question.

24 THE WITNESS: I would assume that, as I've
25 stated previously, these directions were coming

Kristin Hendrix - October 27, 2021

1 directly from him to paper a loan. These changes that
2 are made are only to the dollar amount. Interest rate
3 is pulled right off the IRS website.

4 That is his approval to paper a loan and in
5 fact execute or approve the loan.

6 Q. (BY MR. RUKAVINA) In May of 2019, would
7 Mr. Waterhouse -- what was his practice as far as using
8 an ink signature on documents as opposed to an
9 e-signature? Did he have a practice?

10 MR. MORRIS: Objection to the form of the
11 question.

12 THE WITNESS: He has never specifically said,
13 on certain documents I would like to ink it with my
14 signature. Probably at this time, 99 percent of the
15 stuff my team got his signature on was his e-signature.
16 I think it just depended on the group and what it was.

17 Q. (BY MR. RUKAVINA) So how would he authorize
18 you or your team to use his e-signature for any given
19 document in May of 2019?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: Through the conversations that
23 would have been had before these emails went out saying
24 paper loan.

25 Q. (BY MR. RUKAVINA) And -- okay. So, and

Kristin Hendrix - October 27, 2021

1 after his e-signature was used either on these notes or
2 other documents in May of 2019, would you have brought
3 the documents back to him for any kind of verification?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: Probably not. These are all
7 very standard. We've papered hundreds of loans. So I
8 think he trusted that we can handle updating a date and
9 a dollar amount on these loan templates.

10 Q. (BY MR. RUKAVINA) Do you know or believe, or
11 your recent review of documents, did it reveal an email
12 from Mr. Waterhouse to you specifically authorizing his
13 e-signature on Exhibits 4 and/or 5?

14 A. Not that I recall seeing, no.

15 Q. Sitting here today, do you have any memory of
16 Mr. Waterhouse orally or otherwise specifically
17 authorizing you to affix his e-signature to Exhibits 4
18 and/or 5?

19 A. Specifically on these loans, no, I don't
20 recall those conversations. But, again, our practice
21 has always been we have this discussion, he's under the
22 understanding that we're going to paper the loans, he's
23 always comfortable with using his e-signature.

24 This is not something me or my team would
25 have done without that authority and approval from him.

Kristin Hendrix - October 27, 2021

1 Q. But you have no memory of that authority or
2 approval, specifically for 4 and 5?

3 MR. MORRIS: Objection. Asked and answered
4 about five times.

5 THE WITNESS: Same as my answer I just gave.

6 Q. (BY MR. RUKAVINA) And I think you mentioned
7 that in your years at Highland your team papered
8 hundreds of loans?

9 A. Yeah.

10 Q. In your time at Highland, is it your
11 testimony that the accounting -- corporate accounting
12 department never made a mistake with respect to
13 anything that it did?

14 MR. MORRIS: Objection to the form of the
15 question.

16 THE WITNESS: No, I did not say that.

17 Q. (BY MR. RUKAVINA) Do you recall any mistakes
18 in your time at the corporate accounting group at
19 Highland that had been made, any significant mistakes?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: Significant mistakes, not that
23 I can recall.

24 Q. (BY MR. RUKAVINA) No accounts payable
25 mistakenly paid?

Kristin Hendrix - October 27, 2021

1 MR. MORRIS: Objection to the form of the
2 question.

3 THE WITNESS: I cannot specifically answer
4 that question with 17 years of work to recall, sorry.

5 MR. RUKAVINA: Just take a quick break. If
6 you need a restroom -- off the record.

7 (Off the record.)

8 Q. (BY MR. RUKAVINA) Going back to Exhibits 4
9 and 5.

10 Mr. Waterhouse signed these promissory notes.
11 Is there any particular reason why he signed them as
12 opposed to Dondero or someone else?

13 A. No particular reason. He's an officer for
14 both companies. He's a signatory.

15 Q. Who decided, if anyone, to your knowledge,
16 that he would be the one signing the notes, these two
17 notes?

18 A. I don't know who would have decided that, but
19 typically if Frank specifically wanted Jim Dondero to
20 sign it, he would say, take it to Jim to sign.

21 Q. Do you have a recollection of
22 Mr. Dondero -- strike that.

23 Do you have a recollection of Mr. Waterhouse
24 signing other promissory notes?

25 A. Yes. I know for sure he has signed other

Kristin Hendrix - October 27, 2021

1 promissory notes. I can't tell you explicitly which
2 ones.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) Are you saying that in May
5 of 2019 -- strike that.

6 By May of 2019, was it not the standard
7 practice at the debtor that Mr. Dondero would sign
8 intercompany promissory notes?

9 MR. MORRIS: Objection to the form of the
10 question.

11 THE WITNESS: No, that's not standard
12 practice. Just needed to be somebody -- somebody who
13 is a signer for the entity on the incumbency
14 certificate.

15 Q. (BY MR. RUKAVINA) Was there a standard
16 practice, or did you just describe the standard
17 practice that it was someone on the incumbency
18 certificate?

19 A. That's correct, somebody on the incumbency
20 certificate. Frank is a great prospect to sign, with
21 giving direction to set loans up, send money out. Why
22 wouldn't he sign it.

23 Q. Do you have any memory sitting here today of
24 Mr. Waterhouse telling you or agreeing that he would be
25 signing these two promissory notes for HCMFA?

Kristin Hendrix - October 27, 2021

1 A. Not specifically, but he didn't need to tell
2 me. He typically would tell me if he wanted Jim to
3 sign them.

4 Q. Sitting here today, do you have any memory of
5 giving Mr. Waterhouse these two promissory notes after
6 they were prepared?

7 A. I specifically don't remember walking into
8 his office and providing it to him, but he could have
9 found it on our shared drive if he wanted to.

10 Q. Do you have any memory or in your recent
11 review of documents did you see any email to the effect
12 of you sending either or both of these promissory notes
13 to Mr. Waterhouse after they were papered up?

14 A. I don't have any specific recollection,
15 again, but he had access to look at them.

16 Q. On the shared drive?

17 A. Yes.

18 Q. In May -- I'm going to ask this question
19 multiple different ways, so let's start with kind of
20 the general.

21 In May or by May of 2019, was there a
22 repository, electronic or paper, where the debtor kept
23 original promissory notes that were owed -- where money
24 was owed to it?

25 A. Original meaning paper?

Kristin Hendrix - October 27, 2021

1 Q. Well, let's go back a little bit in time.

2 Would you agree that at some point prior to
3 2019 the standard course was that paper notes were ink
4 signed?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: I could not tell you
8 specifically when notes were or were not ink signed.

9 Q. (BY MR. RUKAVINA) Was there any repository,
10 to the best of your recollection, as of May 2019 where
11 any ink-signed original promissory notes were kept by
12 the debtor?

13 A. No. We always would scan them in, save them
14 on our shared drive. Never had paper copies.

15 Q. So that's -- fixing to ask that question
16 next.

17 So Exhibits 4 and 5, would they even have
18 been printed after they were papered up?

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: Possibly. Somebody could have
22 printed them.

23 Q. (BY MR. RUKAVINA) Do you remember printing
24 Exhibits 4 or 5 sitting here today?

25 A. I don't recall printing them myself, no.

Kristin Hendrix - October 27, 2021

1 Q. Would there have been a reason to print them
2 out if, as you said, the notes were stored
3 electronically?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: There could be a reason. I
7 don't recall that I for any reason printed these
8 particular notes.

9 Q. (BY MR. RUKAVINA) So as of May 2019, is it
10 your testimony that notes that were papered up by the
11 corporate accounting group would have been saved
12 electronically on the system and not kept by way of
13 paper copies in some file?

14 A. Correct. That's right.

15 Q. This is additional metadata. And you
16 understand I have a bit of an accent.

17 What are we on?

18 (Off the record.)

19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is
20 going to be additional metadata for the May 3, 2019,
21 note that we've been looking at, and Exhibit 9 will be
22 the same thing for the May 2 note that we've been
23 looking at.

24 That's 8. That's 9.

25 (Whereupon, Exhibits 8 & 9 were marked for

Kristin Hendrix - October 27, 2021

1 identification.)

2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to
3 represent to you again that my office has faithfully
4 printed this metadata out without doctoring or changing
5 anything, and I ask you to assume that. If I'm wrong
6 on that, then your answers don't count.

7 Ma'am, as I look at these two documents, it
8 says last modified by Kristin Hendrix.

9 Do you see that?

10 A. Yes.

11 Q. And that would have -- that could have only
12 been you; correct, in that department?

13 A. I hope so, yes.

14 Q. Seeing these two documents, can you agree
15 with me now that it was in fact you that papered up
16 Exhibits 4 and 5?

17 MR. MORRIS: Objection. Asked and answered.

18 THE WITNESS: I would assume so since my name
19 is on it, yes.

20 Q. (BY MR. RUKAVINA) Both of these documents
21 say last printed -- I'm sorry. If you see related
22 dates, it says last printed May 2, 2019, 11:27 A.M. Do
23 you have any memory or any understanding as to why that
24 date would be there or what last printed might mean?

25 A. I don't know why it says last printed the day

Kristin Hendrix - October 27, 2021

1 before it was created. That doesn't make any sense. I
2 have no idea.

3 Unless, the only thing I could think of is if
4 we changed this template. When I say "this," the
5 \$2.4 million loan, which was papered on the 2nd, and
6 then used it for the next day for the template to
7 update the date, possibly. I have no idea.

8 Q. Well, it may be -- and I understand that you
9 don't have any memory; we're speculating a little bit.

10 It may be, looking at Exhibits 8 and 9, that
11 the \$2.4 million note was printed on May 2, and then
12 after having been used as the template for the
13 \$5 million note, the \$5 million note would not have
14 been printed.

15 Does that sound possible?

16 MR. MORRIS: Objection to the form of the
17 question.

18 THE WITNESS: Sure, it could be possible.

19 Q. (BY MR. RUKAVINA) But you don't have any
20 memory either way?

21 A. No. And when these were printed they're
22 printed to PDF, I believe, is probably what that means.

23 Q. Okay.

24 We're going to switch gears a little bit now,
25 if you want to make a pile of those exhibits.

Kristin Hendrix - October 27, 2021

1 Obviously, you're welcome to use them anytime you need
2 to, but I think we're done with those notes.

3 Going to hand you what we're going to mark as
4 Exhibit 10, which is an email chain produced by the
5 debtor.

6 And I don't know how anyone on the video will
7 see it. I apologize. I'll have to send it to you
8 later.

9 (Whereupon, Exhibit 10 was marked for
10 identification.)

11 Q. (BY MR. RUKAVINA) Now, if you start with
12 this email chain, it starts on November 19, 2020 from
13 Jack Donohue to you, copying Mr. Seery and various
14 others.

15 Do you see that?

16 A. Yes.

17 Q. And Mr. Donohue is asking you to provide him
18 the financial records of HCMFA due to the funds owed
19 the debtor.

20 Do you see that?

21 A. Yes.

22 Q. Do you recall that email from Mr. Donohue to
23 you?

24 A. Yes.

25 Q. Do you recall any context or subsequent

Kristin Hendrix - October 27, 2021

1 discussions or how that email came to be, or do you
2 just recall getting that email?

3 A. I just recall getting the email.

4 Q. You write back, hi Jack, Scott Ellington is
5 going to follow up with the board on this request.

6 Do you see that?

7 A. Yes.

8 Q. Do you recall why you told Jack that
9 Mr. Ellington was going to follow up?

10 A. From what I recall, I had asked Frank
11 Waterhouse if it was okay to send these financials
12 over, and he wanted me to check with Scott Ellington
13 and that was Scott's response.

14 Q. And did he tell you why he wanted you to
15 check with Scott Ellington?

16 A. Just to make sure that there were no issues
17 with sending them over.

18 Q. Mr. Seery writes back, can I get this ASAP.
19 HCMFA is way overdue.

20 Do you see that?

21 A. Yes.

22 Q. And Mr. Seery writes again, it's about a week
23 later, and he says, this is an explicit direction from
24 me as CEO of HCMLP. But it looks like you are the
25 recipient of that December 2 email; correct?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. Do you remember him sending you that email
3 and copying those people?

4 A. Yes.

5 Q. Do you remember anything happening in that
6 week between his November 25 and December 2 email along
7 the same discussion lines?

8 A. I don't remember anything. I think I was
9 probably left out of any discussions, and if there were
10 any, it was with Scott Ellington and whomever he had
11 discussions with.

12 Q. Then subsequent, on December 2, Mr. Seery
13 writes, all, Scott and I have spoken and agree that the
14 information should be provided to James immediately.

15 Would that have been James Romey, do you
16 think?

17 A. Yes.

18 Q. And who was James Romey?

19 A. He also worked for DSI.

20 Q. And then he writes, Kristin, please proceed
21 with James. If anyone has any questions or issues,
22 please call me.

23 Do you see that?

24 A. Yes.

25 Q. Did you proceed with James Romey?

Kristin Hendrix - October 27, 2021

1 A. I further made sure that Scott was okay, to
2 confirm. He said yes, please do, and I did send them
3 to James Romey.

4 Q. So Mr. Seery has some of it in this email
5 chain, but do you have any understanding as to why
6 either DSI or Mr. Seery in November of 2020 was asking
7 for the financial records of HCMFA?

8 A. I do not, other than what's in this email.

9 Q. Did you discuss with either DSI or Mr. Seery
10 or Mr. Waterhouse in November or December 2020 whether
11 the demand notes from HCMFA should be demanded, should
12 be called?

13 A. I did not have discussions.

14 Q. Next exhibit is Exhibit 11. This is another
15 email chain.

16 And I apologize to the folks on the video.
17 I'll have to get it to you during some break.

18 MR. MORRIS: Hold on one second.

19 MR. RUKAVINA: Sure. Off the record.

20 (Off the record.)

21 (Whereupon, Exhibit 11 was marked for
22 identification.)

23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,
24 if you'll go to the beginning of this email chain, is
25 an email on January 6, 2021, again from Mr. Donohue to

Kristin Hendrix - October 27, 2021

1 you, copying Waterhouse, Seery, a bunch of others.

2 Where he says, at the direction of Jim Seery,
3 please provide DSI with the requested information for
4 each entity below.

5 And you'll see the entity includes both of my
6 clients, NexPoint Advisors and HCMFA. And the
7 information includes bank statements, income
8 statements, balance sheets, cash flows.

9 Do you see that?

10 A. Yes.

11 Q. Do you recall this email?

12 A. Vaguely, yes.

13 Q. Did you have any concerns when you received
14 this email?

15 A. Concerns about the email, no. I probably
16 checked with -- I would have checked with Frank to make
17 sure it was okay to send this first.

18 Q. Frank Waterhouse?

19 A. Yes.

20 Q. Do you have any understanding as to why
21 Mr. Donohue requested bank statements, income
22 statements, balance sheets for NexPoint and/or HCMFA?

23 A. I do not.

24 Q. Did he or anyone at DSI tell you why they
25 were requesting that?

Kristin Hendrix - October 27, 2021

1 A. Not that I can recall.

2 Q. If we go forward in time, you'll see that
3 Mr. Waterhouse is writing back to Mr. Donohue. And
4 then Mr. Seery interjects and says, these are HCMLP
5 business records. Please provide them as requested by
6 Jack ASAP.

7 Do you see that?

8 A. Yes.

9 Q. And it looks like you were not privy to
10 subsequent communications where Frank and Jim were
11 talking back and forth about this. You were not privy
12 to those, like you weren't blind copied or anything to
13 your recollection?

14 A. No.

15 Q. Did you in fact on or after January 6, 2021,
16 provide Mr. Donohue or anyone on his team the
17 information that he had requested as it relates to
18 NexPoint and/or HCMFA?

19 A. Without going back to check, I couldn't
20 answer yes or no for certain.

21 Q. So I think you mentioned when you received
22 the email from Mr. Donohue you would have checked with
23 Frank. And what do you remember asking Frank or
24 checking with him about?

25 A. I don't remember asking him specifically. In

Kristin Hendrix - October 27, 2021

1 fact, it's possible that Frank just responded on his
2 own here to Jack. Again, would have been a
3 conversation that I can't specifically recall.

4 Q. Sure. And you don't specifically remember
5 today providing Mr. Donohue any of that information;
6 right?

7 A. Right.

8 Q. You don't specifically remember today having
9 a discussion with Mr. Donohue or Seery or anyone else
10 at or about that time as to why they were wanting this
11 information?

12 A. Correct.

13 Q. Exhibit 12, Ms. Hendrix, is going to be the
14 December 3, 2020, letter by which Highland called the
15 notes.

16 MR. MORRIS: Objection to the form of the
17 question if there was one.

18 (Whereupon, Exhibit 12 was marked for
19 identification.)

20 Q. (BY MR. RUKAVINA) Are you familiar with
21 Exhibit 12, Ms. Hendrix?

22 A. No, I haven't seen this.

23 Q. Prior to today, you don't remember seeing
24 this?

25 A. No.

Kristin Hendrix - October 27, 2021

1 Q. I think you're answering no?

2 A. No, sorry, no.

3 Q. On or before December 3, 2020, did anyone
4 discuss with you whether Highland should call the
5 demand notes that were outstanding by HCMFA?

6 A. No.

7 Q. Do you recall in December 2020 any discussion
8 with anyone at the debtor about the NexPoint
9 \$30.7 million term note?

10 A. Repeat your question again, please.

11 Q. Sure. So you're familiar, and we'll talk
12 about it in some detail, with the NexPoint
13 \$30.7 million note?

14 A. Yes.

15 Q. And again, we'll talk about it, but at that
16 point in time that was a term note; correct?

17 A. Correct.

18 Q. Do you remember in the December 2020 or
19 November 2020 time frame discussing with anyone at the
20 debtor the status of that NexPoint note?

21 A. Yes, we would have discussed this on a weekly
22 basis in our cash meetings that we would have had, as
23 identifying that there are payments due on these loans
24 in December.

25 Q. What weekly cash meetings are you referring

Kristin Hendrix - October 27, 2021

1 to?

2 A. We had a standing weekly cash meeting with
3 Frank Waterhouse, myself, Jim Seery. I can't recall
4 everyone on it. Some of the DSI folks. We go through
5 cash forecasts. It's a 13-week cash forecast. We go
6 through it every week.

7 It's going to lay out incoming and outgoing
8 payments that are forecasted, of which these term loans
9 were in those forecasts, so they were discussed.

10 Q. And Mr. Morris produced some of those to me
11 this morning. I haven't had time to go through them.

12 But it is your recollection in November and
13 December of 2020 the fact of the NexPoint term note
14 being out there was known to Mr. Seery?

15 A. Yes.

16 Q. And the fact of an upcoming December 31,
17 2020, payment was known to Mr. Seery?

18 A. Yes.

19 Q. So with that background, in November and
20 December of 2020, do you remember discussing with
21 anyone anything to the effect of, oh, it really would
22 be better if NexPoint defaulted on that note so we
23 could call it?

24 A. No.

25 Q. Did Mr. Seery ever state to you anything in

Kristin Hendrix - October 27, 2021

1 November or December of 2020 about how the debtor might
2 monetize that NexPoint note?

3 A. No.

4 Q. Did he discuss with you any potential sale of
5 that promissory note?

6 A. No.

7 Q. Did DSI ever discuss with you in November or
8 December 2020 any potential sale of that note?

9 A. No.

10 Q. Or how to monetize that note?

11 A. No.

12 Q. So -- well, strike that.

13 Did Mr. Seery or anyone at DSI, or anyone at
14 all, in November or December of 2020 state any words to
15 you to the effect that they were hoping that NexPoint
16 would default on that note?

17 A. Never.

18 Q. Or that it would be in the debtor's interest
19 for NexPoint to default on that note?

20 A. No.

21 Q. In November or December of 2020, do you
22 recall having any discussions with Mr. Seery or anyone
23 at DSI as to the collectibility of that note? And by
24 that I mean whether NexPoint can pay the note?

25 A. I don't specifically recall. It most likely

Kristin Hendrix - October 27, 2021

1 came up in cash conversations.

2 Q. I think you were assistant controller back
3 then?

4 A. Yes.

5 Q. Would a discussion of a borrower's ability to
6 repay have been something within your general sphere of
7 responsibility in that time frame?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: It depends on who the borrower
11 is, and at that time we did -- we had knowledge over
12 that information, so yes.

13 Q. (BY MR. RUKAVINA) Well, you've seen some
14 instructions or requests from Mr. Seery to you and DSI
15 to you for financial information of NexPoint and HCMFA.
16 We've gone through those documents; right?

17 A. Yes.

18 Q. Does that refresh your memory that there was
19 any internal discussion that you were privy to about
20 the ability of HCMFA and/or NexPoint to pay these
21 notes?

22 A. I don't recall that specifically being asked.
23 It could have.

24 Q. Did you ever at any point in time have any
25 employment or officer or any title or role with

Kristin Hendrix - October 27, 2021

1 NexPoint Advisors, LP?

2 A. No.

3 Q. Were you ever the controller or assistant
4 controller for NexPoint Advisors LP?

5 A. No.

6 Q. Did you ever at any point in time have any
7 employment, officer or any title or role at HCMFA?

8 A. No.

9 Q. Were you ever the controller or assistant
10 controller of HCMFA?

11 A. No.

12 Q. So you might have indirectly provided
13 services to those two as part of shared services, but
14 never directly; is that fair?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: When you say never directly,
18 meaning I was not employed by those entities?

19 Q. (BY MR. RUKAVINA) Correct.

20 A. That's correct.

21 Q. Do you have any understanding -- first of
22 all, NexPoint did not make a payment on December 31,
23 2020; correct?

24 A. Correct.

25 Q. Okay. Do you have any understanding of why

Kristin Hendrix - October 27, 2021

1 not?

2 A. Yes.

3 Q. What's your understanding?

4 A. Either November 30 or December 1, 2020, I
5 received a phone call from Frank Waterhouse that said,
6 no payments are going from any of the Advisors to
7 Highland.

8 Q. Can you be more specific with what he said?

9 A. That's what he said.

10 Q. So he said no payments from the Advisors to
11 Highland?

12 A. Yes.

13 Q. Did he reference the promissory note
14 expressly?

15 A. No.

16 Q. But no payments means?

17 A. Nothing.

18 Q. That would logically in your mind include the
19 promissory note?

20 A. Yes.

21 Q. Did you ask him why?

22 A. No.

23 Q. Did he tell you why?

24 A. No.

25 Q. Did you, prior to January 1, 2021, did you

Kristin Hendrix - October 27, 2021

1 hear from anyone as to why Mr. Waterhouse gave that
2 instruction?

3 A. Not that I recall.

4 Q. Did you, after that November 30 or December 1
5 phone call, did you follow up with him or anyone else
6 about the upcoming note payment?

7 A. I didn't have any reason to.

8 Q. I'm going to -- let me find you a document
9 for a moment.

10 Just so the record is complete, let's include
11 this promissory note. It's going to be Exhibit 13.
12 This is the NexPoint promissory note.

13 (Whereupon, Exhibit 13 was marked for
14 identification.)

15 Q. (BY MR. RUKAVINA) I take it you've seen this
16 promissory note, Exhibit 13?

17 A. Yes.

18 Q. And I think you testified about this before,
19 but just to summarize to save time.

20 This would have been a note that you would
21 not have papered but would have gone through legal
22 because it was a roll-up. Is that generally accurate?

23 A. Yes.

24 Q. And do you have any memory at all of having
25 anything to do with papering up this loan?

Kristin Hendrix - October 27, 2021

1 A. Not that I recall.

2 Q. Would you have had, after 2017 and before
3 2021, any role with respect to any payments or upcoming
4 payments on this note, any role at all?

5 A. Yes.

6 Q. What would have been your role or roles?

7 A. That would have been taking direction from
8 Frank Waterhouse or possibly Jim Dondero saying, go
9 ahead and make these payments that are due on these
10 term notes.

11 Q. Would you have recorded on any books or
12 records payments that actually were made?

13 A. Not me personally.

14 Q. Who would have?

15 A. Our accountant, which could have been one of
16 two different people, depending on the time frame.

17 Q. Would you have had any role with respect to
18 recording those payments or is that just something that
19 your group would have done?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: I would not have had a role.
23 My group would have.

24 Q. (BY MR. RUKAVINA) What about calculating
25 amortization and/or interest payments that are due or

Kristin Hendrix - October 27, 2021

1 upcoming? Who would have done that, you or someone
2 else?

3 A. Our accountant.

4 Q. Do you have any memory of doing that?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: Not during 2017 through 2019.

8 Q. (BY MR. RUKAVINA) What about 2020?

9 A. No.

10 Q. Going back to that November 30 or December 1
11 telephone call, do you recall who initiated the call?

12 A. To me?

13 Q. The one between you and Mr. Waterhouse.

14 A. Frank called me.

15 Q. Frank called you.

16 And was it just to discuss -- or just to give
17 you that instruction, no payments from the Advisors, or
18 was there other things discussed?

19 A. I could not tell you if something else was
20 discussed on that phone call.

21 Q. Do you remember if it was a long phone call
22 or short?

23 A. Couldn't tell you.

24 Q. Do you remember where you were when he called
25 you?

Kristin Hendrix - October 27, 2021

1 A. At my house.

2 Q. Did you answer on a cell phone or landline?

3 A. My cell phone.

4 Q. Is there any chance in hell that your cell
5 phone would still have a record of that phone call,
6 like what time it was and how long it lasted?

7 MR. MORRIS: Objection to the form of the
8 question.

9 Q. (BY MR. RUKAVINA) I apologize for using
10 hell.

11 MR. MORRIS: And to foundation.

12 THE WITNESS: I have no idea.

13 Q. (BY MR. RUKAVINA) Do you have your cell
14 phone with you right now?

15 A. In the other room.

16 Q. I might ask you during the break to just --
17 we'll take a short break before I'm done, and I'll ask
18 you if you've had a chance to look for November and
19 December 2020 phone logs between you and
20 Mr. Waterhouse. I would ask you to do that, please.

21 A. Sure.

22 Q. And I apologize, I think you said you thought
23 it was a short telephone call?

24 A. I have no idea.

25 Q. Did the telephone call or Mr. Waterhouse's

Kristin Hendrix - October 27, 2021

1 instructions surprise you in any way?

2 A. Nothing surprises me anymore, so no.

3 Q. Did it surprise you back in November or
4 December of 2020?

5 A. No.

6 Q. Did it pique your curiosity?

7 A. Nope.

8 Q. Just another instruction from your boss?

9 A. Yep.

10 Q. Exhibit 14 is going to be a document that
11 we're not sure what it is and we're not sure who
12 prepared it. It appears to be a ledger of charges
13 against and payments on this promissory note.

14 I'm just saying that so the people on the
15 phone know what it is, but you don't have to take what
16 I said as correct.

17 (Whereupon, Exhibit 14 was marked for
18 identification.)

19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14
20 was produced by the debtor. And I'm going to ask you,
21 do you know what this is or have you seen it before?
22 Can you help us state what it is?

23 A. This looks like it is an amortization
24 schedule of the NexPoint Advisors term loan.

25 Q. Would this have been something that it

Kristin Hendrix - October 27, 2021

1 appears to you would have been maintained internally by
2 the debtor, or does it look like it might have been
3 prepared by DSI or someone else for some other reason?

4 A. It looks like the debtor's amortization
5 schedule that they kept.

6 Q. Did the debtor keep an amortization schedule
7 for the NexPoint promissory note, to your knowledge?

8 A. Yes.

9 Q. Did the debtor keep amortization schedules
10 for other term promissory notes?

11 A. Yes.

12 Q. In what format, like Excel spreadsheets or
13 Word documents? What is your recollection for NexPoint
14 specifically?

15 A. Excel.

16 Q. Would that have been on the shared system or
17 something?

18 A. Yes.

19 Q. And who would have been responsible on an
20 ongoing basis to update the NexPoint amortization
21 schedule?

22 MR. MORRIS: Objection to the form of the
23 question.

24 THE WITNESS: Depends on what time you're
25 asking.

Kristin Hendrix - October 27, 2021

1 Q. (BY MR. RUKAVINA) Let's talk about the year
2 of 2020.

3 A. That would have been Hayley Eliason, our
4 accountant at that time.

5 Q. What about the year 2019?

6 A. Still Hayley.

7 MR. RUKAVINA: I'm going to just ask, to
8 preserve the record, Mr. Morris, if he hasn't already,
9 to produce any such Excel spreadsheet in the native
10 form.

11 Q. (BY MR. RUKAVINA) If we look at this,
12 Ms. Hendrix -- and I'm a little confused as to what
13 these entries mean. Maybe you could help me. But
14 columns that say interest paid, principal paid, total
15 paid, do you know what those columns mean?

16 A. Exactly as they state. These are interest
17 and principal payments made on the date that's listed,
18 and then you've got a total.

19 Q. And then they're in brackets because they're
20 negative numbers?

21 A. Correct.

22 Q. So here's what I'm not understanding. Go to
23 the second page.

24 You see there's an entry under interest paid
25 12/30/29 [verbatim] that says negative 530,000 and

Kristin Hendrix - October 27, 2021

1 change but it doesn't use brackets?

2 A. It's a negative number. It's just a
3 formatting issue.

4 Q. What about also on that same page in the
5 other column, principal paid, 5/31/2020, it's a
6 positive number, 575,550.

7 MR. MORRIS: Where are you?

8 MR. RUKAVINA: On page 2 of this exhibit.

9 MR. MORRIS: What date?

10 MR. RUKAVINA: May 31, 2020. And it's the
11 column over, principal paid. It's a positive number,
12 575,000 and change.

13 MR. MORRIS: Got it, thank you.

14 Q. (BY MR. RUKAVINA) Do you see that,
15 Ms. Hendrix?

16 A. Yes.

17 Q. Do you have an understanding of why that
18 number would be positive?

19 A. Actually, I think this looks like an entry to
20 me where the interest is what we call picking. So on
21 the anniversary date of this loan, which is May, from
22 what I can tell, the accrued interest total, which is
23 that 575-, is being rolled into principal.

24 That's what I can tell from looking at it.

25 Q. Okay. Do you have any understanding as to

Kristin Hendrix - October 27, 2021

1 why that would have been done or why that would have
2 been done on that day?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: Because that's the anniversary
6 date of the loan. I would assume that that's how the
7 loan is written.

8 Q. (BY MR. RUKAVINA) And I think that that
9 Section 1 of the promissory note does say, the unpaid
10 principal balance of this note from time to time
11 outstanding shall bear interest.

12 At the rate of 6 percent per annum from the
13 date hereof until maturity date, compounded annually on
14 the anniversary of the date of this note.

15 Do you see that?

16 MR. MORRIS: Objection to the form of the
17 question.

18 THE WITNESS: Yeah, I see that.

19 Q. (BY MR. RUKAVINA) Assuming that this is the
20 correct amortization schedule for the NexPoint note,
21 and that the numbers in here are correct, if you look
22 at the second page under the column total paid there
23 are a number of entries for 2019.

24 Do you see that, the far right column?

25 A. At the top, yes.

Kristin Hendrix - October 27, 2021

1 Q. For example, 1.3 million, 2.1 million,
2 1.3 million.

3 Do you see that?

4 A. Yes.

5 Q. Assuming that that's correct, do you have any
6 memory or understanding whether in the year 2019, or
7 why NexPoint was making these payments on this
8 promissory note?

9 A. Without going back and reading through emails
10 I can only assume that, from looking at this, Highland,
11 the debtor, would have needed cash, and so this is one
12 way of getting cash to the debtor.

13 Q. This is kind of like what we discussed in the
14 beginning, that Mr. Dondero on a cash needed basis
15 would just transfer money between entities?

16 A. Yes.

17 Q. Do you have any memory in the first half of
18 2019 whether Highland, the debtor, had any particular
19 need for cash money at that time?

20 A. We generally always had a need for cash, so
21 yes.

22 Q. And so if NexPoint was transferring money
23 back to Highland on this note because Highland needed
24 the money, would those have been recorded as
25 prepayments by the debtor?

Kristin Hendrix - October 27, 2021

1 MR. MORRIS: Objection to the form of the
2 question.

3 THE WITNESS: Yes.

4 Q. (BY MR. RUKAVINA) Sitting here today, do you
5 have any reason to believe based on the formatting or
6 anything on Exhibit 14 that it's not the amortization
7 schedule as it was maintained by the debtor?

8 A. I don't have any reason to not believe that
9 it was.

10 Q. Going to show you a few documents that I'm
11 hopefully going to burn through, but you're certainly
12 entitled to take all the time that you need.

13 So first is going to be a document that
14 Mr. Morris produced this morning. It's not Bates
15 labeled. I don't know why.

16 MR. MORRIS: As I said in my email, my
17 paralegal is sick and so I wanted you to have the
18 documents. We'll Bates stamp them later, but we have a
19 written record from my email of what we produced to
20 you.

21 MR. RUKAVINA: You're assuming that I read my
22 emails.

23 MR. MORRIS: Sorry about that. I confess,
24 sometimes I don't as well.

25 Q. (BY MR. RUKAVINA) So I'm going to hand you

Kristin Hendrix - October 27, 2021

1 Exhibit 15 and I'm going to represent to you that it's
2 the email that Mr. Morris sent to me today and I've not
3 doctored it in any way.

4 (Whereupon, Exhibit 15 was marked for
5 identification.)

6 MR. MORRIS: Do you have the email that it
7 was attached to?

8 MR. RUKAVINA: Somewhere. I can find it at a
9 break.

10 MR. MORRIS: I'll let the witness testify.
11 This was attached to an email. Not my email, but
12 another email. But I'll let the witness testify.

13 MR. RUKAVINA: Off the record.

14 (Off the record.)

15 Q. (BY MR. RUKAVINA) So you have Exhibit 15.

16 And during the break we established, I don't
17 have a copy of it right now, but you sent Exhibit 15 on
18 August 29, 2020, to Mr. Dondero by email, copying
19 Mr. Waterhouse, as well as a couple of other
20 attachments; is that correct?

21 A. Correct.

22 Q. Do you recall what prompted you to send that
23 email and this attachment?

24 A. Yes.

25 Q. What?

Kristin Hendrix - October 27, 2021

1 A. Frank Waterhouse called me on August 29, and
2 requested that I do so.

3 Q. Did he tell you why?

4 A. From what I recall, this was a time when Jim
5 was trying to come up with his bargain or pop land,
6 whatever he referenced it as. This was all information
7 that Frank said he wanted.

8 Q. Okay. So going back to Exhibit 15, what I'm
9 interested in is NexPoint Advisors, the 23,846,000 and
10 change number.

11 Do you see that?

12 A. Yes.

13 Q. Where did that number -- or where did this
14 Exhibit 15 come from, if you understand my question?

15 A. Sure. These numbers should all be balances
16 off of the corresponding notes that each entity owed to
17 the debtor.

18 Q. Did you or someone prepare Exhibit 15
19 specifically for that email? Or was Exhibit 15 already
20 existing somewhere on the system?

21 A. I believe that we prepared it specifically
22 for this request.

23 Q. Do you recall who?

24 A. It was either myself or our accountant. I
25 don't recall who put it together.

Kristin Hendrix - October 27, 2021

1 Q. Okay. And where would that 23 million and
2 change number for NexPoint have come from, an
3 amortization schedule?

4 A. Yes.

5 Q. And what about Highland Capital Management
6 Fund Advisors? You see \$10.5 million and change demand
7 on Exhibit 15?

8 A. Yes.

9 Q. Where would that \$10.5 million number have
10 come from, do you remember?

11 A. The same. It would have come off of the
12 amortization schedules for all of their notes.

13 Q. How was there an amortization schedule for a
14 demand note?

15 A. Because it's accruing interest.

16 Q. So sitting here today, you expect there would
17 be some amortization schedule like Exhibit 14 but for
18 HCMFA?

19 A. Yes.

20 Q. Now we're going to have an exhibit [verbatim]
21 chain that's going to be marked as Exhibit 16.

22 (Whereupon, Exhibit 16 was marked for
23 identification.)

24 MR. RUKAVINA: For the folks on the video,
25 Exhibit 16 is the email chain that Mr. Morris used last

Kristin Hendrix - October 27, 2021

1 week regarding the Section 15(c) document.

2 Q. (BY MR. RUKAVINA) Are you familiar with this
3 Exhibit 16 email chain, Ms. Hendrix?

4 A. Yes.

5 Q. Why are you familiar with it?

6 A. Well, I'm copied on it, and I saw it
7 yesterday.

8 Q. Do you have any memory -- well, that's a
9 stupid question. But prior to yesterday, did you have
10 any memory of this?

11 A. Yes.

12 Q. And do you recall the context or the purpose
13 of this exhibit, or this email chain?

14 A. From what I remember this is the time where
15 information was being prepared for the retail board to
16 re-up the debtor's shared services.

17 Q. So, here -- you're certainly welcome to read
18 it in its entirety and if you feel like you want to or
19 need to, that's fine. But I only have one question.
20 Well, one question with two subparts.

21 I'm looking at Ms. Lauren Thedford's,
22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]
23 where she says, I see the below from the 6/30
24 financials. NPA, due to HCMLP and affiliates as of
25 June 30, 2020.

Kristin Hendrix - October 27, 2021

1 Do you see that, ma'am?

2 A. Yes.

3 Q. 23 million 683?

4 A. Yes.

5 Q. And you see, HCMFA due to HCMLP as of
6 June 30, 2020, 12,286,000?

7 MR. MORRIS: Objection to the form of the
8 question.

9 Q. (BY MR. RUKAVINA) Strike that.

10 It says 12,286. What do you take that 12,286
11 to mean?

12 A. I think that's a typo and it should have
13 said -- well, there's several things wrong with this,
14 from looking at it.

15 She left off three zeros on the end of it.
16 Should have said 12,286,000. Secondly, that amount is
17 our due to affiliates on HCMFA's books, not just due to
18 HCMLP.

19 Q. That was going to be my question, why that
20 12,286,000 number didn't jive with the 10,530,000
21 number on Exhibit 15?

22 A. Yes, there's another loan due to a different
23 affiliate.

24 Q. So that \$12,286,000 amount doesn't mean that
25 it's all due to Highland; is that correct?

Kristin Hendrix - October 27, 2021

1 A. Correct.

2 Q. Exhibit 17 is going to be the January 7, 2021
3 notice from the debtor to NexPoint about the default.

4 (Whereupon, Exhibit 17 was marked for
5 identification.)

6 Q. (BY MR. RUKAVINA) You've been handed
7 Exhibit 17. Have you seen this document before?

8 A. Not that I believe.

9 Q. And I think we've asked this before, but just
10 to clarify.

11 Did anyone at the debtor, including Mr. Seery
12 or DSI, discuss with you after December 31, 2020 that
13 the payment had not been made and what, if anything,
14 the debtor should do about that?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: I can't recall specific
18 conversations that may or may not have been had around
19 that topic.

20 Q. (BY MR. RUKAVINA) Would -- so back then you
21 were the assistant controller, on January 7; right?

22 A. Yes.

23 Q. Do you think that back then Mr. Seery or DSI
24 would have sought your advice or input as to what they
25 should do about the missed payment?

Kristin Hendrix - October 27, 2021

1 A. No.

2 MR. MORRIS: Objection to the form of the
3 question.

4 THE WITNESS: No.

5 Q. (BY MR. RUKAVINA) That would have been
6 outside of your purview?

7 A. Yes.

8 Q. And you see in this notice in the middle, it
9 says an amount due as of January 8 in the \$24,471,000
10 range.

11 Do you see that?

12 A. Yes.

13 Q. Do you have any idea, I take it you don't,
14 where that number came from?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: I don't know who provided that
18 number or where it came from.

19 Q. (BY MR. RUKAVINA) Do you have any
20 understanding as to why that number is higher than the
21 number on Exhibit 15?

22 A. My guess would be that Exhibit 15 is just
23 principal balances.

24 Q. Okay.

25 Exhibit 18, please.

Kristin Hendrix - October 27, 2021

1 (Whereupon, Exhibit 18 was marked for
2 identification.)

3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,
4 is an email chain between you and Mr. Waterhouse on
5 January 12, 2021. Do you remember this email chain?

6 A. No.

7 Q. Do you remember on January 12 Mr. Waterhouse
8 emailing you, asking when the last amort payment due
9 and what the amount was for NexPoint?

10 A. No.

11 Q. When was the last time -- well, strike that.
12 Do you remember ever seeing this email
13 between then and today?

14 A. No.

15 Q. Do you have any present memory of any
16 communications with Mr. Waterhouse on or about
17 January 12, 2021 regarding the NexPoint default or
18 note?

19 A. Not specific, no.

20 Q. Any general memory?

21 A. Not that I can pinpoint, no.

22 Q. Were you aware that on or about January 14
23 NexPoint transferred about \$1.4 million and change to
24 the debtor?

25 A. Yes.

Kristin Hendrix - October 27, 2021

1 Q. Were you aware of it then?

2 A. Was I aware of what?

3 Q. That transfer of \$1.4 million and change.

4 A. On January 14?

5 Q. Yes.

6 A. Yes.

7 Q. Did you facilitate that transfer?

8 A. Yes.

9 Q. Who told you to make that transfer?

10 A. Frank Waterhouse.

11 Q. Did he tell you why?

12 A. Nope.

13 Q. He just said make the transfer?

14 A. Yes.

15 Q. Did he tell you that it was on account of the
16 NexPoint note?

17 A. Yes.

18 Q. Did he tell you how to, if at all, to credit
19 that note for that amount?

20 A. No.

21 Q. Sitting here today, you have no memory other
22 than that Frank Waterhouse told you to transfer some
23 \$1.4 million on the NexPoint note?

24 A. Right.

25 Q. And do you recall, was that oral or written

Kristin Hendrix - October 27, 2021

1 or how would that have been?

2 A. That was a phone call.

3 Q. Do you recall who initiated the phone call?

4 A. Frank called me.

5 Q. Was that the only topic discussed in that
6 phone call to your memory?

7 A. Yes.

8 Q. Did you ask him why the payment or
9 anything -- did you ask him anything at all?

10 A. No.

11 Q. And after you made the payment -- or I'm
12 sorry, after you caused the payment to be made, did you
13 take any further steps with respect to the NexPoint
14 note?

15 A. I forwarded the payment confirmation, showing
16 that the money was sent from NexPoint Advisors to
17 Highland, forwarded that payment confirmation from the
18 bank to Jack Donohue at DSI, letting him know.

19 Q. Did you let Mr. Donohue or anyone at DSI know
20 about the transfer before the transfer was made?

21 A. No.

22 Q. And you sent that by email to Mr. Donohue?

23 A. Yes.

24 Q. Did Mr. Donohue thereafter have any
25 discussion with you about that in any way?

Kristin Hendrix - October 27, 2021

1 A. I have no idea.

2 Q. He didn't ask what this was for or anything
3 like that?

4 A. He may have asked what the amount
5 represented. I can't specifically recall. But it's
6 possible.

7 Q. Okay. Do you recall any discussion about
8 that time, January 14, with Mr. Donohue or
9 Mr. Waterhouse or anyone as to whether that payment
10 would in any way relieve NexPoint of the default or
11 would not relieve NexPoint of the default?

12 A. No.

13 Q. Ms. Hendrix, I believe that I am done. I
14 would like you, however, because it's important, to
15 check your phone. Would you like a short, five-minute
16 restroom break and just check --

17 A. Yeah, and I might need help figuring out how
18 to do that.

19 Q. I'm not saying that it's possible, but I'm
20 going to ask you on the record to look for that
21 November 30 or December 1, 2020 phone call.

22 MR. MORRIS: We're happy to do that.

23 Q. (BY MR. RUKAVINA) But what I would like if
24 you find it, I would like you to tell me the time, the
25 date and the length of that call.

Kristin Hendrix - October 27, 2021

1 A. Okay.

2 Q. Thank you.

3 We'll be back in five minutes.

4 (Off the record.)

5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the
6 break did you look at your phone?

7 A. I did.

8 Q. Did you find anything?

9 A. Sadly, it only goes back to October 5 of
10 2021.

11 Q. Not surprised. Thank you.

12 Have I been courteous to you today?

13 A. Yes.

14 MR. RUKAVINA: I pass the witness.

15 MR. MORRIS: Thank you.

16 MR. AIGEN: Are we ready to move forward?

17 MR. MORRIS: Yes. You're a little dark
18 there.

19 MR. RUKAVINA: Can we increase the volume on
20 that thing?

21 (Off the record.)

22 EXAMINATION

23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.
24 My name is Michael Aigen. I represent Mr. Dondero,
25 HCMS and HCRE Partners in several of the adversary

Kristin Hendrix - October 27, 2021

1 proceedings today.

2 I'm going to try to ask you some questions
3 about these adversary proceedings. I'll try to make it
4 as quick as possible so we don't keep you here.

5 You understand that you're still under oath;
6 is that correct?

7 A. Correct.

8 Q. First topic I want to ask you about is one of
9 the defenses in this case related to an oral agreement.
10 Let me start off with this question.

11 Are you aware that some of the defendants in
12 these adversary proceedings have raised a defense that
13 there was a subsequent oral agreement allowing the
14 notes at issue to be potentially forgiven if certain
15 events occurred?

16 A. I've recently been made aware that this came
17 up, yes.

18 Q. When you say recently, approximately when?

19 A. Within the last week.

20 Q. And where did you learn that from?

21 A. In my speakings with John Morris just
22 preparing for today.

23 MR. AIGEN: And John, I'm going to assume
24 that those conversations are privileged?

25 MR. MORRIS: That's a very fair assumption.

Kristin Hendrix - October 27, 2021

1 Q. (BY MR. AIGEN) Other than the conversation
2 you just referred to with Mr. Morris, have you ever had
3 any other conversations with anyone about this alleged
4 oral agreement that Defendants are contending occurred?

5 A. No.

6 Q. So prior to that conversation with Mr. Morris
7 you weren't even aware of this alleged defense related
8 to an oral agreement. Is that fair to say?

9 A. That's right.

10 Q. This is a similar question but slightly
11 different, just to sort of finish this topic. I'm not
12 asking about this oral agreement as a defense, I'm just
13 asking more generally.

14 Other than this conversation, were you aware
15 generally of any conversations that anyone had where
16 the notes at issue might be forgiven if certain events
17 occurred?

18 MR. MORRIS: Objection to the form of the
19 question.

20 THE WITNESS: No.

21 Q. (BY MR. AIGEN) Is it fair to say that you
22 haven't had any conversations about this subsequent
23 oral agreement with anyone other than Mr. Morris?

24 A. That's fair.

25 Q. You never discussed it with Mr. Seery?

Kristin Hendrix - October 27, 2021

1 A. No.

2 Q. Never discussed it with Mr. Klos?

3 A. No. Well, sorry, Mr. Klos was present when
4 John and I talked about it. But that's it.

5 Q. Have you ever made any investigation or
6 effort in order to determine if this oral agreement
7 actually occurred?

8 A. No.

9 Q. If there was such an oral agreement to
10 potentially forgive the notes, do you believe that you
11 would have known about such an oral agreement as part
12 of your duties and responsibilities?

13 A. Yes, I would hope so.

14 Q. Why do you say that?

15 A. That's something that should be disclosed in
16 audited financial statements, and me and my team are
17 responsible for preparing those financial statements
18 and presenting them to the auditors as fair and
19 accurate.

20 Q. And is it fair to say that this oral
21 agreement should have been disclosed to PwC if it was
22 determined that it was material?

23 A. Yes.

24 Q. And have you done any sort of analysis to
25 determine whether the oral agreement at issue here

Kristin Hendrix - October 27, 2021

1 would have been material for purposes of a PwC audit?

2 A. I've not done any work, just finding out
3 about it, but from what it sounds like, it would be
4 material.

5 Q. That's your opinion, that it would have been
6 material; is that fair to say?

7 A. Fair.

8 Q. Have you had any discussions with anyone else
9 about whether the oral agreement would have been
10 material?

11 A. No.

12 Q. Changing topics a little bit here, are you
13 aware --

14 (Off the record.)

15 Q. (BY MR. AIGEN) Are you aware that a few of
16 the loans at issue here, specifically related to HCMS
17 and HCRE, were term loans as opposed to demand loans?

18 A. Yes.

19 Q. And are you aware that for those particular
20 loans, there were payments that were supposed to be
21 made but weren't on December 31, 2020?

22 A. Yes.

23 Q. Do you have any understanding as to why those
24 payments weren't made with respect to the HCMS and HCRE
25 term loans on December 31, 2020?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. Can you tell me why?

3 A. Sure. It goes along with the same statement
4 as HCMFA and NPA and the phone call that I got from
5 Frank Waterhouse saying there's no payments coming from
6 any of the affiliates to the debtor.

7 Q. I may have written that down wrong when you
8 talked about that before, but I believe your earlier
9 testimony when you described that conversation was that
10 there was no more payments coming from the Advisors,
11 not affiliates.

12 Let me ask you then, what was the
13 conversation? Was it no more payments from affiliates
14 or Advisors?

15 A. It could have been either. I probably did
16 say Advisors. But regardless, those payments would
17 have been directed to me to be made, either by Frank
18 Waterhouse or Jim Dondero.

19 And I would assume that nobody directed me to
20 make those payments because we weren't making any
21 payments from Jim's related parties. I don't know for
22 a fact, but that's what I would assume. Those were all
23 under the same umbrella.

24 Q. And again, let's back up a second.

25 When you refer to Advisors, fair to say that

Kristin Hendrix - October 27, 2021

1 that does not include HCMS and HCRE; is that correct?

2 A. When I say Advisors, I am referring to HCMFA
3 and NPA.

4 Q. And when you use the term "affiliates,"
5 you're referring to all four; is that correct?

6 A. Correct.

7 Q. Just want to make sure we're on the same
8 page.

9 When you answered the previous question you
10 started to get into assumptions and things like that.
11 Let me start off with what your specific recollection
12 of that phone call was. Tell me as best as you can
13 what you remember Frank telling you?

14 A. I remember it as being no payments from the
15 Advisors to the debtor.

16 Q. So you don't remember the instruction being,
17 don't make payments from the affiliates. It was, don't
18 make payments from the Advisors; is that correct?

19 A. Correct.

20 Q. So is it fair to say that you don't remember
21 any instructions telling you not to make any payments
22 from HCMS or HCRE?

23 A. That's fair.

24 Q. So if that is the case, why weren't payments
25 made from HCMS or HCRE for December 31, 2020, payment?

Kristin Hendrix - October 27, 2021

1 A. Sure. Typically what would have happened is
2 Frank would be talking to Jim Dondero about making
3 these payments and getting his approval to do so,
4 because Jim Dondero is, you know, directing payments
5 out of these entities.

6 I have never -- had never been given the
7 direction to effectuate those payments by anybody.

8 Q. Is it fair to say, then, that you're not
9 aware of any instructions from anyone saying that the
10 HCMS and HCRE payments should not be made on
11 December 31, 2020?

12 A. That's fair.

13 Q. So the reason the payments weren't made is
14 because you never got an affirmative instruction to
15 actually make that payment; is that correct?

16 A. Correct.

17 Q. And you're not aware of Mr. Dondero
18 instructing anyone that HCMS and HCRE should not have
19 made the December 31, 2020, payments; is that correct?

20 A. I'm not aware personally, no. Correct.

21 Q. You say personally. In any way are you aware
22 of such a specific instruction?

23 A. No.

24 Q. If that payment was to be made, who at the
25 debtor would have been responsible for making those

Kristin Hendrix - October 27, 2021

1 payments on behalf of HCMS and HCRE?

2 MR. MORRIS: Objection to the form of the
3 question.

4 THE WITNESS: The corporate accounting team.

5 Q. (BY MR. AIGEN) And that included you?

6 A. Yes.

7 Q. And in December of 2020, were you aware that
8 those payments were due on December 31, 2020?

9 A. Yes.

10 Q. Did you make any attempts or efforts to
11 determine whether Mr. Dondero wanted those payments to
12 be made?

13 A. I did not, no.

14 Q. Why not?

15 A. That would have been something that Frank
16 Waterhouse would have done directly with Jim Dondero
17 himself.

18 Q. Did you have any conversations with anyone
19 about whether the December 31 payments for HCMS and
20 HCRE would be made in December of 2020?

21 A. Not that I can recall.

22 Q. And you didn't think it was your
23 responsibility to check on those payments and find out
24 if they should have been made?

25 A. Right, correct.

Kristin Hendrix - October 27, 2021

1 Q. And is that because it's only your job to
2 make payments that you're told to specifically make; is
3 that correct?

4 A. Yes, in this case, that is correct.

5 Q. Is it fair to say then that as part of your
6 job responsibilities you've never made a payment to
7 anyone without being specifically told by Mr. Dondero
8 and Mr. Waterhouse?

9 A. Sorry, say that again.

10 Q. As part of your job responsibilities, have
11 you ever made a payment to anyone without the specific
12 instruction of Mr. Waterhouse or Mr. Dondero?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: Yes, we make payments all the
16 time.

17 Q. (BY MR. AIGEN) So why is this different in
18 that this payment was not made without the specific
19 instructions from Mr. Waterhouse and Mr. Dondero, even
20 though you believed the payment was due on December 31,
21 2020?

22 A. The difference between making a loan payment
23 and making normal course -- or sorry, normal, ordinary
24 course, you know, overhead expense payments is that
25 something like that is not necessarily what we would

Kristin Hendrix - October 27, 2021

1 take to Jim Dondero to approve.

2 He doesn't have time to approve every single
3 overhead payment that we're making out of every single
4 entity. That's what Frank is for.

5 Something that's once a year that's more
6 material in amount, such as a loan payment, that is
7 something that needs to get approved by Jim Dondero.

8 Q. You say needs to get approved. What's your
9 basis for that, something in a policy manual, something
10 someone told you?

11 A. It's a policy that my team followed. I don't
12 think that it's written in an actual manual anywhere,
13 but anything that's not ordinary course needs to get
14 approved by Jim Dondero.

15 Q. Is that something that's written in a policy
16 anywhere?

17 A. Not that I know of.

18 Q. Were you ever told that payments in the
19 ordinary course can be made without Mr. Dondero's
20 approval but loan payments cannot?

21 A. Yes, I do recall years ago that Frank and I,
22 possibly Jim, this was years ago, had a conversation
23 that anything ordinary course is up to Frank to
24 approve. And this is, quite frankly, up to Frank.

25 Whatever he felt Jim needed to sign off on,

Kristin Hendrix - October 27, 2021

1 that's what Jim would sign off on. This was not my
2 responsibility to make that decision.

3 Q. And in December -- prior to the December 31,
4 2020, due date you didn't have any conversations with
5 anyone about whether this -- these payments that were
6 due should be made; is that correct?

7 A. Correct.

8 Q. And you didn't try to check with anyone to
9 see whether anyone wanted these payments to be made; is
10 that correct?

11 A. Correct.

12 Q. Subsequent to the payment being missed, did
13 you ever have any conversations with anyone about why
14 the payment was not made?

15 A. Not that I recall.

16 Q. So is it fair to say that sitting here today
17 you have no idea why the payments were not made for
18 HCMS and HCRE on December 31, 2020?

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: I don't have any specific
22 evidence telling me why they weren't. I can make
23 assumptions but that's not going to help.

24 Q. (BY MR. AIGEN) Well, did you ever have any
25 conversations with anyone about why those payments were

Kristin Hendrix - October 27, 2021

1 not made?

2 A. No.

3 Q. You have no idea why they weren't made other
4 than just speculation; is that fair to say?

5 A. Correct.

6 MR. MORRIS: Objection. Asked and answered.

7 THE WITNESS: Correct.

8 Q. (BY MR. AIGEN) And are you aware that with
9 respect to those two loans, some payments were actually
10 made in the next month, in January of 2021?

11 A. Yes.

12 Q. What role, if any, did you have with respect
13 to those payments?

14 A. Frank Waterhouse would call me and tell me to
15 have my team effectuate a wire.

16 Q. And you say would call you. Do you remember
17 this conversation or are you just assuming it occurred?

18 MR. MORRIS: Objection to the form of the
19 question.

20 THE WITNESS: If we sent a payment out, Frank
21 would have told me to do it. I would not have done it
22 on my own.

23 Q. (BY MR. AIGEN) Sitting here today, do you
24 have a specific recollection of the conversation where
25 someone told you to make the January 2021 payments?

Kristin Hendrix - October 27, 2021

1 A. I can't tell you the exact date, but, yes, I
2 do have a recollection of Frank calling or emailing me
3 to have, I believe it was the HCRE wire sent out for
4 their payment.

5 Q. What about the HCMS payment?

6 A. I don't recall that one as much.

7 Q. Other than the payment being made, do you
8 have any recollection of any other conversations about
9 why the payment was being made?

10 A. No.

11 Q. Are you aware of any conversations that
12 anyone had regarding whether these payments would
13 deaccelerate loans?

14 A. No.

15 Q. Is that something you would normally be part
16 of, conversations like that?

17 A. No.

18 Q. Changing topics here. Not sure if this is an
19 area that you know anything about.

20 Are you familiar with the term, as it's used
21 at Highland, NAV ratio trigger period?

22 A. No.

23 Q. This may go very quick. If I represent to
24 you that it's a term that's used in the -- in the
25 fourth amended limited partnership agreement for

Kristin Hendrix - October 27, 2021

1 Highland Capital Management, would that refresh your
2 recollection at all?

3 A. No.

4 Q. Fair to say, then, that you have no knowledge
5 as to whether NAV ratio trigger period was ever reached
6 at any time prior to bankruptcy buyouts?

7 A. No, I don't know.

8 Q. Have you ever had any conversations with
9 Nancy Dondero?

10 A. I have not.

11 Q. Never met her?

12 A. No. I may have exchanged an email with her
13 on an invoice, but that's the extent of it. No
14 conversations.

15 Q. In the years leading up to the bankruptcy of
16 Highland Capital, was there any time period where
17 Highland was unable to pay its salaries?

18 A. Salaries?

19 Q. Salaries of its employees?

20 A. No.

21 Q. In the time leading up to the Highland
22 bankruptcy, was there any time period where Highland
23 wasn't able to pay bonuses owed to any of its
24 employees?

25 A. Not that I know of. Not that I can recall.

Kristin Hendrix - October 27, 2021

1 Q. Are you aware of any time period leading up
2 to the Highland bankruptcy where Highland was unable to
3 pay its bills?

4 A. There's times where we would be in a cash
5 flow crunch and we would stretch our AP, but eventually
6 it would get paid.

7 Q. And I think this is the last topic and we can
8 probably move through this pretty quickly.

9 Are you aware of any loans made by Highland
10 to any of its employees or officers that were forgiven
11 in part or all?

12 A. Yes.

13 Q. Which officers or employees are you aware of?

14 A. I recall there were two employees. I can't
15 remember one of them, but I believe another, the second
16 one, was Paul Adkins. Again, I'm just recalling this
17 was years ago.

18 Q. And these two are the only ones you're aware
19 of?

20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.
21 It's possible Paul Adkins was the other one, but I
22 can't tell you for sure.

23 Q. Tim Lawler and some other employee that you
24 can't remember the name of are the only two that you're
25 aware of?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. This other employee, I know you don't
3 remember the name. Is there any other description that
4 you can give me, what their position was, how long they
5 worked, or is it just you remember those loans?

6 A. I just remember we had two employee loans.

7 Q. Approximately when was this?

8 A. I couldn't even tell you. All the years just
9 commingle together.

10 Q. More than five years ago?

11 A. Yes.

12 Q. More than 10 years ago?

13 A. I couldn't say.

14 MR. AIGEN: Why don't we take a five-minute
15 break and then I'll either be done or have just a few
16 wrap-up questions.

17 MR. RUKAVINA: Okay.

18 (Off the record.)

19 FURTHER EXAMINATION

20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of
21 2019, would you on behalf of Highland alone,
22 unilaterally, have the authority to lend to HCMFA 2.4-
23 and/or \$5.0 million?

24 A. No.

25 Q. And would you have had any authority on

Kristin Hendrix - October 27, 2021

1 behalf of HCMFA in May of 2019 to bind HCMFA to such
2 notes?

3 A. No.

4 Q. Thank you, ma'am.

5 EXAMINATION

6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out
7 of your pile, Exhibit Number 3.

8 And this is the email from Dave Klos to
9 corporate accounting on May 2nd concerning the
10 \$2.4 million that was going to be transferred from
11 HCMLP to HCMFA?

12 A. Yes.

13 Q. And how did Mr. Klos characterize that
14 transfer?

15 A. He called it a new intercompany loan.

16 Q. What does a new intercompany loan mean to
17 you?

18 A. That means we are creating a new loan
19 document, sending money out, tracking it as a
20 brand-new, fresh loan.

21 Q. And he sent this email to an email group
22 called corporateaccounting@hcmlp.com. Do I have that
23 right?

24 A. Yes.

25 Q. Were you included in that email group?

Kristin Hendrix - October 27, 2021

1 A. I was.

2 Q. Can you identify everybody else who you
3 recall being in that email group?

4 A. Yes.

5 Q. Who else was in that email group?

6 A. Dave Klos, Frank Waterhouse, myself, Hayley
7 Eliason, and Blair Roeber.

8 Q. Okay. Did Mr. Waterhouse ever tell anybody,
9 to the best of your knowledge, in May 2019 that the
10 transaction should not be booked as a loan?

11 A. No, not to my knowledge.

12 Q. You testified earlier that there was, you
13 recall, a similar email the next day with respect to a
14 \$5 million transaction.

15 Do you recall that?

16 A. Yes.

17 Q. Do you recall if that email also went to
18 corporate accounting?

19 A. I believe so, yes.

20 Q. And to the best of your knowledge, would
21 Mr. Waterhouse have been informed on May 3, 2019, that
22 the transaction was being booked by the corporate
23 accounting department as a loan?

24 A. Yes.

25 Q. Did Mr. Waterhouse tell you at that time or

Kristin Hendrix - October 27, 2021

1 at any time thereafter that it was a mistake to book it
2 as a loan?

3 A. No.

4 Q. Did Mr. Waterhouse tell you at that time or
5 at any time thereafter that he didn't intend to sign
6 the promissory notes?

7 A. No.

8 MR. RUKAVINA: Objection. To the last
9 question, objection to form.

10 Go ahead.

11 Q. (BY MR. MORRIS) Okay. The promissory notes,
12 to be clear, are the two promissory notes that you
13 testified to earlier that have been marked as exhibits
14 in this deposition for \$5 million and \$2.4 million
15 respectively.

16 With that definition as promissory notes, did
17 Mr. Waterhouse ever tell you at any time that it was a
18 mistake to sign those notes?

19 MR. RUKAVINA: I'll object to the form.

20 Go ahead.

21 THE WITNESS: No.

22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or
23 anybody -- withdrawn. I'll go back to the first
24 question.

25 Did Mr. Waterhouse or anybody in the world

Kristin Hendrix - October 27, 2021

1 ever tell you at any time since May of 2019 that it was
2 a mistake to issue the promissory notes as we've
3 defined them?

4 A. No.

5 Q. Did Mr. Waterhouse or anybody in the world
6 tell you that Mr. Waterhouse wasn't authorized to affix
7 his signature to those promissory notes?

8 MR. RUKAVINA: And I'll object. Assumes
9 facts not in evidence, i.e., the signature. That's
10 what I've been objecting to.

11 But go ahead and answer.

12 THE WITNESS: Say it again.

13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or
14 anybody in the world tell you at any time that he
15 wasn't authorized to have his signature affixed to the
16 promissory notes?

17 MR. RUKAVINA: Same objection.

18 THE WITNESS: No.

19 Q. (BY MR. MORRIS) Did you have anything to do
20 with Highland's annual audit?

21 A. Yes.

22 Q. What role did you play with respect to
23 Highland's annual audit?

24 A. I personally was in charge of completely
25 writing the entire audit report for the debtor and for

Kristin Hendrix - October 27, 2021

1 HCMFA. I oversaw all other aspects of the audit my
2 team carried out.

3 Any requests from the auditors, emails with
4 questions, any issues that arose, all of that went
5 through me.

6 Q. And did Mr. Waterhouse play a role in
7 relation to the annual audit?

8 A. Yes.

9 Q. What is your understanding of
10 Mr. Waterhouse's role?

11 A. Let's see. He was in charge of reviewing the
12 financial statements as they were done, so he saw the
13 end product. He would sign off on the management rep
14 letter. He signed engagement letters.

15 If there were any big issues, those got --
16 those would be brought to Frank's attention for sure.

17 Q. Okay. And are you a CPA?

18 A. Yes.

19 Q. And are you familiar with management rep
20 letters?

21 A. Yes.

22 Q. What is your understanding of what a
23 management rep letter is?

24 A. That's basically telling the auditors that
25 everything in the audited financial report is accurate

Kristin Hendrix - October 27, 2021

1 to the best of their knowledge, they've presented
2 everything that they have fair and accurately, they're
3 not withholding any information.

4 Q. And do you recall that the -- Highland's 2018
5 audit was completed in early June 2019?

6 A. Yes.

7 Q. And did you cause the two promissory notes
8 that we're talking about here to be delivered to
9 PricewaterhouseCoopers in connection with the audit?

10 A. Yes.

11 Q. And were those two promissory notes delivered
12 to PricewaterhouseCoopers because they constituted
13 subsequent events?

14 A. Yes.

15 Q. Do you recall whether those promissory notes
16 were described in Highland's 2018 audited financial
17 statements?

18 A. Yes.

19 Q. And did Mr. Waterhouse or Mr. Dondero ever
20 tell you at any time that there was a mistake in the
21 audited financial statements?

22 A. No.

23 Q. Did they ever tell you -- did Mr. Waterhouse
24 or Mr. Dondero or anybody in the world ever tell you at
25 any time that the two notes were mischaracterized in

Kristin Hendrix - October 27, 2021

1 the 2018 audited financial statements of Highland
2 Capital?

3 A. No.

4 Q. Do you know whether HCMFA also had its annual
5 financial statements audited by PricewaterhouseCoopers?

6 A. Yes.

7 Q. Did you play any role in connection with that
8 audit?

9 A. Yes.

10 Q. What role did you play in connection with
11 HCMFA's audit of the 2018 financial statements?

12 A. Same exact role as with the debtors --

13 Q. And --

14 A. -- writing the audit report, overseeing all
15 other audit functions.

16 Q. And did you and your group cause HCMFA to
17 deliver to PricewaterhouseCoopers the two promissory
18 notes that we've been discussing from May 2019?

19 A. Yes.

20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody
21 in the world ever tell you that it was a mistake to
22 deliver those promissory notes to PwC in connection
23 with HCMFA's 2018 audit?

24 A. No.

25 Q. Were those notes delivered -- withdrawn.

Kristin Hendrix - October 27, 2021

1 Were those notes delivered to
2 PricewaterhouseCoopers because they constituted
3 subsequent events in connection with the 2018 audit?

4 A. Yes.

5 Q. Do you recall whether PricewaterhouseCoopers
6 included as a liability on HCMFA's balance sheet the
7 obligations reflected in the two promissory notes at
8 issue?

9 MR. RUKAVINA: Objection. Best evidence.

10 Answer.

11 THE WITNESS: On the 2018 financials?

12 Q. (BY MR. MORRIS) Correct.

13 A. Those would not have been included as
14 liabilities in the 2018 financials.

15 Q. Do you know if HCMFA completed their audit
16 for 2019?

17 A. No.

18 Q. Okay. Did the notes appear in HCMFA's 2018
19 audited financials under the subsequent events section?

20 A. Yes.

21 MR. RUKAVINA: Objection. Best evidence.

22 Go ahead.

23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did
24 Mr. Waterhouse or Mr. Dondero or anybody in the world
25 ever tell you that it was a mistake to include

Kristin Hendrix - October 27, 2021

1 reference to these notes in HCMFA's 2018 audited
2 financial statements?

3 MR. RUKAVINA: Same objection.

4 THE WITNESS: No.

5 Q. (BY MR. MORRIS) Okay. Do you recall, did
6 anybody in the world ever tell you that the
7 transactions described in Exhibit 3 and the other
8 document that you recall should never have been booked
9 as a loan?

10 A. No.

11 Q. Did anybody in the world tell you that you
12 made a mistake when you created those promissory notes?

13 A. No.

14 Q. Can you pull out what was marked as
15 Exhibit 16.

16 Do you understand that the Advisors provide
17 services to certain retail funds?

18 A. Yes.

19 Q. And do you recall that the services are
20 subject to an agreement that's subject to annual
21 review?

22 A. Yes.

23 Q. So looking at Exhibit 16, did you understand
24 that the retail board had asked Highland to disclose --
25 I'll just read it from the document on page 2,

Kristin Hendrix - October 27, 2021

1 Bates number ending 881.

2 There's an email from Ms. Thedford that says,
3 quote, are there any material amounts -- withdrawn.

4 Are there any material outstanding amounts
5 currently payable or due in the future, open paren,
6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint
7 Advisors or any other affiliate that provides services
8 to the funds?

9 Do you see that?

10 A. Yes.

11 Q. And were you generally aware that that was
12 part of the annual renewal process?

13 A. Yes.

14 Q. And you made some comments earlier about
15 Ms. Thedford's response on the first page.

16 Do you recall that?

17 A. Yes.

18 Q. And you actually were able to correct certain
19 mistakes that you perceived in her response.

20 Do I have that right?

21 A. Correct.

22 Q. Do you know -- do you see where it says,
23 HCMFA due to HCMLP as of June 30, 2020, let's just call
24 it \$12.3 million.

25 Do you see that?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And above that there is a reference to the
3 6/30 financials.

4 Do you see that?

5 A. I do.

6 Q. Do you know what the reference to the 6/30
7 financials is?

8 A. Yes.

9 Q. And what is that reference?

10 A. That is referencing the amounts on the
11 balance sheet at 6/30 that we provided for the 15(c)
12 materials to the board.

13 Q. Okay. And does that \$12.3 million include,
14 to the best of your knowledge, the principal amount of
15 the two notes that we were talking about?

16 A. Yes.

17 MR. RUKAVINA: Objection. Best evidence.

18 THE WITNESS: Yes.

19 Q. (BY MR. MORRIS) And how do you know that?

20 A. Because I kept their financials, I know for a
21 fact that it included all of their outstanding notes
22 and it most certainly included these two notes that
23 we've been talking about today.

24 Q. And to the best of your recollection did
25 HCMFA provide the 6/30 financials to the retail board?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And to the best of your knowledge did
3 Mr. Dondero or Mr. Waterhouse or anybody in the world
4 ever tell you that the financial statements that were
5 provided to the retail board were erroneous in any way?

6 A. No.

7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody
8 in the world ever tell you that the 6/30 financials
9 that were given to the retail board should not have
10 included the \$7.4 million principal amount on the two
11 promissory notes?

12 MR. RUKAVINA: Objection. Best evidence.

13 Answer.

14 THE WITNESS: No.

15 Q. (BY MR. MORRIS) Do you know whether -- are
16 you at all familiar with the Advisors' actual response
17 to the retail board in October 2020?

18 A. Say that again, please.

19 Q. So this email string is October 2020; right?

20 A. Right.

21 Q. And do you understand that this is kind of a
22 discussion between Mr. Waterhouse and Ms. Thedford as
23 to how to respond?

24 A. Yes.

25 Q. Have you ever seen the actual response that

Kristin Hendrix - October 27, 2021

1 was given to the retail board?

2 A. I likely did. I can't tell you for certain
3 that I was on the correspondence.

4 Q. Do you recall any discussion at any time that
5 the \$12.3 million number in Ms. Thedford's email should
6 be changed in the final report to the retail board?

7 A. I don't believe so.

8 Q. Did anybody ever tell you at any time that
9 the \$12.3 million number was incorrect?

10 A. No.

11 Q. Did anybody ever tell you at any time that
12 that number wrongly included the \$7.4 million reflected
13 in the two notes?

14 A. No.

15 Q. Okay. Do you recall that earlier that
16 summer -- we looked at Exhibit 15?

17 A. Yep.

18 Q. And that was an attachment to an email that
19 you personally sent to Mr. Dondero. We saw that
20 before?

21 A. Right.

22 Q. And this Exhibit 15, which was attached to
23 your email, identifies amounts due and owing from
24 NexPoint Advisors; right?

25 A. Right.

Kristin Hendrix - October 27, 2021

1 Q. And it identifies amounts due and owing for a
2 number of different entities, including HCMFA; right?

3 A. Correct.

4 Q. Do you know whether the amount included for
5 HCMFA on Exhibit 15 included the principal amount due
6 on the two promissory notes?

7 A. It does.

8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask
9 you why -- withdrawn.

10 Did Mr. Dondero or Mr. Waterhouse ever ask
11 you how the \$10.5 million number was calculated?

12 A. No.

13 Q. Did Mr. Dondero or Mr. Waterhouse ever
14 suggest to you that the number was incorrect?

15 A. No.

16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody
17 in the world ever question the number that you gave to
18 Mr. Dondero in the summer of 2020 concerning the
19 principal amount due by HCMFA to HCMLP?

20 A. No.

21 Q. Have you ever made a payment -- withdrawn.

22 Have you ever caused a payment to be made in
23 connection with an intercompany loan without receiving
24 the prior approval from either Frank Waterhouse or
25 Mr. Dondero?

Kristin Hendrix - October 27, 2021

1 A. No.

2 Q. Has anybody ever said to you that you made a
3 mistake in applying a payment against principal or
4 interest due on an intercompany loan?

5 A. No.

6 Q. We saw this morning, and we produced to
7 Mr. Rukavina and he mentioned earlier, 13-week
8 forecasts? Do you understand that?

9 A. Yes.

10 Q. Did you review the 13-week forecasts
11 recently?

12 A. Yes.

13 Q. And we're talking specifically about the
14 13-week forecasts for the November/December 2020 time
15 period. Do you understand that?

16 A. Yes.

17 Q. Based on your review of those forecasts, did
18 those forecasts specifically identify the principal and
19 interest that were due on the three term notes as of
20 December 28, 2020?

21 A. Yes.

22 Q. And what was the purpose of creating the
23 13-week forecasts?

24 A. Sure. That was to keep everybody informed
25 who was on the cash call, Frank Waterhouse, Jim Seery

Kristin Hendrix - October 27, 2021

1 and others, keep everybody informed of upcoming
2 payments that were due on term loans well in advance.

3 Everybody knew about it. It was out there
4 for everybody to see that was on these cash calls.

5 Q. Now, is it your understanding that
6 Mr. Waterhouse -- withdrawn.

7 Did you email these forecasts -- withdrawn.

8 Did anybody email these forecasts to the best
9 of your recollection in late 2020?

10 A. Yes.

11 Q. And was it sent to the corporate accounting
12 group that we saw earlier?

13 A. It was probably sent to Frank, Seery, the DSI
14 guys that were involved with the cash call.

15 Q. Okay. And so did you participate in the
16 creation of the 13-week forecasts?

17 A. Yes.

18 Q. What role did you play in the creation of the
19 13-week forecasts?

20 A. I was responsible for creating the entire
21 thing.

22 Q. Okay. And based on the work that you did,
23 was one of the purposes to make sure that
24 Mr. Waterhouse was aware of all payments that were
25 coming due under the intercompany notes?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And was that information that was included on
3 the reports to Mr. Waterhouse?

4 A. Yes.

5 Q. And do you recall whether there were any
6 specific discussions in November or December of 2020
7 concerning those payments -- withdrawn. That wasn't a
8 good question.

9 Did Mr. Waterhouse or -- withdrawn.

10 Did anybody on behalf of HCMS or HCRE ever
11 instruct you to make the payments that were due under
12 their term notes?

13 A. No.

14 Q. Did anybody on behalf of NexPoint ever
15 instruct you to make a payment that was due at year end
16 with respect to the NexPoint term note?

17 A. No.

18 Q. Were you authorized to make those payments
19 without the prior approval of either Mr. Waterhouse or
20 Mr. Dondero?

21 A. No.

22 Q. I think you testified that there were certain
23 payments that were made in January 2001 under each of
24 the three term notes.

25 Do I have that right?

Kristin Hendrix - October 27, 2021

1 A. Correct.

2 MR. RUKAVINA: 2021.

3 MR. MORRIS: Thank you very much.

4 Q. (BY MR. MORRIS) With that amendment, do you
5 understand my question?

6 A. Yes.

7 Q. Do you know why the three payments were made
8 in January of 2021 on each of three term notes?

9 A. Because Frank Waterhouse instructed me to do
10 so.

11 Q. And he had not instructed you to make those
12 payments prior to that time?

13 A. Correct.

14 Q. Did you have to prompt Frank Waterhouse in
15 January of 2021 to make those payments?

16 A. No.

17 Q. So based on the 13-week forecast that you
18 prepared and delivered to Mr. Waterhouse, is it your
19 understanding that Mr. Waterhouse knew as early as mid
20 November 2020 that payments would be due under the
21 three term notes at the end of the year?

22 A. Yes.

23 Q. And, in fact, did HCMS and HCRE and NexPoint
24 timely make their installment payments that were due at
25 year end 2018?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And was that done because HCMLP received the
3 instructions of somebody authorized to give the
4 instruction on behalf of those entities?

5 A. Yes.

6 Q. Did HCMS and HCRE and NexPoint timely make
7 the installment payments that were due at year end
8 2019?

9 A. Yes.

10 Q. And why did they make those payments?

11 A. Because we were provided instruction and
12 authorization to do so.

13 Q. Okay. And is the only reason that the
14 payment wasn't made at year end 2020 because nobody on
15 behalf of the Advisors -- withdrawn.

16 Is the only reason that no payment was made
17 at the end of 2020 is because no one on behalf of
18 NexPoint, HCRE, or HCMS directed HCMLP to make those
19 payments?

20 A. Correct.

21 MR. AIGEN: Objection. Form.

22 Q. (BY MR. MORRIS) And you testified earlier to
23 a call that you had with Mr. Waterhouse. I think you
24 said it was either November 30 or December 1.

25 Do you recall that?

Kristin Hendrix - October 27, 2021

1 A. Yes.

2 Q. And did you personally continue to prepare
3 the 13-week forecasts after your conversation with
4 Mr. Waterhouse?

5 A. Yes.

6 Q. And did those 13-week forecasts continue to
7 include the payments that were due under the three term
8 notes at the year end?

9 A. Yes.

10 Q. And that's information that you gave to
11 Mr. Waterhouse; is that right?

12 A. Right.

13 Q. Mr. Rukavina elicited from you the fact that
14 payments of principal hadn't been made on demand notes
15 that were executed in favor of Mr. Dondero's
16 affiliates.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. Was that a topic of conversation with
20 PricewaterhouseCoopers at any time?

21 A. Yes.

22 Q. Can you tell me about that conversation?

23 A. Sure. As part of our annual audit, the
24 auditors would, you know, make sure that our
25 receivables are collectible. And if they thought for

Kristin Hendrix - October 27, 2021

1 any reason they weren't, then they were going to raise
2 an issue, a going concern issue.

3 That came up several years in a row with
4 HCMFA.

5 Q. Do you recall that the three term notes at
6 issue here were all signed on May 31, 2017?

7 A. Yes.

8 Q. And all of those term notes involved a
9 roll-up of previously issued demand notes; is that
10 right?

11 A. Correct.

12 Q. Do you know why in -- at the end of May 2017
13 NexPoint, HCRE, and HCMS rolled up their demand notes
14 into individualized term notes?

15 A. Yes.

16 Q. What is your understanding as to why that
17 happened?

18 A. That would get the auditors a little bit more
19 comfort over our outstanding loans, ensuring that we
20 have an amortization schedule, an underlying contract,
21 showing that payments will be coming in every year on
22 these outstanding receivables.

23 Q. Okay. As the person responsible for
24 preparing Highland's audit, did anybody ever tell you
25 at any time that any of the notes were not valid

Kristin Hendrix - October 27, 2021

1 obligations of the maker?

2 A. No.

3 Q. As the person responsible for Highland's
4 audit, did anybody ever tell you at any time that any
5 of the notes at issue should not have been signed?

6 A. No.

7 Q. As the person responsible for Highland's
8 audit, did anybody ever tell you at any time that any
9 of the notes at issue were signed by mistake?

10 A. No.

11 Q. Did anybody ever tell you at any time that --
12 withdrawn.

13 As the person responsible for Highland's
14 audit, did anybody ever tell you at any time that
15 Mr. Dondero didn't approve of any of the notes?

16 A. No.

17 Q. As the person responsible for Highland's
18 audit, did anybody ever tell you at any time that
19 the -- any of the notes at issue were subject to an
20 oral agreement?

21 A. No.

22 Q. As the person responsible for Highland's
23 audit, did anybody ever tell you at any time that any
24 of the notes were amended?

25 A. No.

Kristin Hendrix - October 27, 2021

1 Q. As the person responsible for Highland's
2 audit, did anybody ever tell you at any time that any
3 of the notes would be forgiven?

4 A. No.

5 Q. During your 15 years at Highland, has an
6 intercompany loan ever been forgiven in whole or in
7 part?

8 A. No.

9 Q. During your -- withdrawn.

10 Can you recall any note that Highland ever
11 held as the payee that was forgiven in whole or in part
12 in the five years prior to bankruptcy, go back to 2014?

13 A. No.

14 Q. Is it your understanding as the person
15 responsible for Highland's audit that the forgiveness
16 of notes, if they were in a material amount, would have
17 had to have been disclosed in the audited financial
18 statements?

19 A. Yes.

20 Q. So is it fair to say that any evidence of the
21 forgiveness of material amounts would have been
22 disclosed in Highland's financial statements?

23 A. Yes.

24 MR. MORRIS: I have no further questions.

25 MR. RUKAVINA: I have none.

Kristin Hendrix - October 27, 2021

1 MR. AIGEN: None.

2 MR. RUKAVINA: Okay. Thank you very much.

3 (Whereupon, the deposition adjourned at
4 1:19 P.M.)

5 --oOo--

6 I declare under penalty of perjury that the
7 foregoing is true and correct. Subscribed at
8 _____, Texas, this ____ day of
9 _____, 2021.

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13 KRISTIN HENDRIX

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CERTIFICATE OF REPORTER

I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021



Brandon Combs, Certified Shorthand
Reporter No. 10927 in and for the
HCMFA APP 0584

Kristin Hendrix - October 27, 2021

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State of Texas
Dickman Davenport, Inc. Cert 312
4228 North Central Expressway
Suite 101, Dallas, TX 75206
(214) 855-5100 (800) 445-9548
Email: info@dickmandavenport.com
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Kristin Hendrix - October 27, 2021

| | | | | |
|--------------------------|--------------------------|-------------------------|-------------------------|-------------------------|
| A | 109:20,21 | 97:21,25 98:9 | 124:1 133:21 | apologize 15:6 |
| A.M 1:22 57:22 | advance 126:2 | 107:25 119:20 | analysis 97:24 | 59:7 62:16 75:9 |
| ability 69:5,20 | adversary 94:25 | 132:20 | and/or 50:13,18 | 75:22 |
| able 108:23 | 95:3,12 | ahead 73:9 | 63:22 64:18 | appear 118:18 |
| 120:18 | advice 46:20 | 113:10,20 | 69:20 73:25 | APPEARANC... |
| above-styled | 88:24 | 114:11 118:22 | 110:23 | 2:1 |
| 1:21 | advised 38:23 | Aigen 2:18 3:4 | anniversary | appeared 2:5,12 |
| Absolutely 17:8 | advisor 39:1 | 94:16,23,24 | 79:21 80:5,14 | 2:19 |
| accent 56:16 | Advisors 1:10 | 95:23 96:1,21 | annual 114:20,23 | appears 47:1 |
| access 24:7 54:15 | 15:14,17,23 | 98:15 102:5 | 115:7 117:4 | 76:12 77:1 |
| accessed 44:19 | 27:20,23 63:6 | 103:17 105:24 | 119:20 120:12 | appended 135:16 |
| account 12:11 | 70:1,4 71:6,10 | 106:8,23 | 130:23 | applying 125:3 |
| 37:7 91:15 | 74:17 76:24 | 110:14 129:21 | annually 80:13 | approval 16:5,8 |
| accountant 16:19 | 84:9 85:6 92:16 | 134:1 | annum 80:12 | 48:12 49:4 |
| 46:10 73:15 | 99:10,14,16,25 | Akard 1:24 2:4 | answer 7:6,6 | 50:25 51:2 |
| 74:3 78:4 84:24 | 100:2,15,18 | alleged 40:16 | 23:11,14 35:2 | 101:3 104:20 |
| accounting 11:16 | 119:16 120:7 | 96:3,7 | 39:19 51:5 52:3 | 124:24 127:19 |
| 12:8,12,18 | 123:24 129:15 | Allocation 38:24 | 64:20 75:2 | approve 48:15 |
| 17:14,15,16,21 | Advisors' 122:16 | 39:1 | 114:11 118:10 | 49:5 104:1,2,24 |
| 18:4 19:9 20:3 | affiliate 34:25 | allowed 135:15 | 122:13 | 132:15 |
| 20:12,20 21:13 | 87:23 120:7 | allowing 95:13 | answered 41:4 | approved 48:18 |
| 31:16,23 35:7 | affiliated 15:11 | amended 107:25 | 51:3 57:17 | 48:19,21 104:7 |
| 40:11 45:17 | affiliates 18:19 | 132:24 | 100:9 106:6 | 104:8,14 |
| 46:3 51:11,11 | 86:24 87:17 | amendment | answering 66:1 | approximately |
| 51:18 56:11 | 99:6,11,13 | 128:4 | answers 42:10 | 95:18 110:7 |
| 102:4 111:9 | 100:4,17 | amort 19:22 90:8 | 43:1 57:6 | April 12:7 |
| 112:18,23 | 130:16 | amortization | anybody 35:25 | area 107:19 |
| 126:11 | affirmative | 73:25 76:23 | 40:8 101:7 | arose 115:4 |
| accounts 13:21 | 101:14 | 77:4,6,9,20 | 112:8 113:23 | ASAP 60:18 64:6 |
| 14:8,15 51:24 | affix 50:17 114:6 | 80:20 82:6 85:3 | 113:25 114:5 | asked 51:3 57:17 |
| accrued 79:22 | affixed 47:5 | 85:12,13,17 | 114:14 116:24 | 60:10 69:22 |
| accruing 85:15 | 114:15 | 131:20 | 117:20 118:24 | 88:9 93:4 106:6 |
| accurate 72:22 | afternoon 94:23 | amount 19:6,7 | 119:6,11 122:3 | 119:24 |
| 97:19 115:25 | ago 33:8 104:21 | 26:10,12 30:12 | 122:7 123:8,11 | asking 6:10 26:7 |
| accurately 116:2 | 104:22 109:17 | 32:23 39:3 | 124:16 125:2 | 29:17,19,24 |
| action 11:6 | 110:10,12 | 43:16 48:15 | 126:8 127:10 | 59:17 62:6 |
| activities 39:20 | agree 55:2 57:14 | 49:2 50:9 87:16 | 127:14 131:24 | 64:23,25 77:25 |
| actual 104:12 | 61:13 | 87:24 89:9 90:9 | 132:4,8,11,14 | 90:8 96:12,13 |
| 122:16,25 | agreed 25:23 | 91:19 93:4 | 132:18,23 | aspects 115:1 |
| addition 39:7 | 26:3 | 104:6 121:14 | 133:2 | assistant 12:6 |
| 41:21 | agreeing 53:24 | 122:10 124:4,5 | anymore 76:2 | 69:2 70:3,9 |
| additional 56:15 | agreement 26:5 | 124:19 133:16 | anytime 21:10 | 88:21 |
| 56:20 | 26:15,21 95:9 | amounts 35:8 | 59:1 | associate 11:18 |
| adjourned 134:3 | 95:13 96:4,8,12 | 40:2 120:3,4 | AP 11:17 12:23 | 32:7 |
| Adkins 109:16 | 96:23 97:6,9,11 | 121:10 123:23 | 32:7 109:5 | assume 6:25 |

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|--|---|--|
| 42:11,25 44:3 48:24 57:5,18 80:6 81:10 95:23 99:19,22 Assumes 114:8 assuming 36:10 40:23 80:19 81:5 82:21 106:17 assumption 95:25 assumptions 100:10 105:23 attached 83:7,11 123:22 attachment 83:23 123:18 attachments 83:20 attempts 102:10 attention 115:16 attorney 2:5,12 2:18 135:18 audit 18:25 98:1 114:20,23,25 115:1,7 116:5,9 117:8,11,14,15 117:23 118:3 118:15 130:23 131:24 132:4,8 132:14,18,23 133:2,15 audited 97:16 115:25 116:16 116:21 117:1,5 118:19 119:1 133:17 auditors 97:18 115:3,24 130:24 131:18 audits 12:24 August 83:18 84:1 author 44:10 authority 36:23 | 50:25 51:1 110:22,25 authorization 129:12 authorize 49:17 authorized 114:6 114:15 127:18 129:3 authorizing 50:12,17 available 21:24 Avenue 2:11,17 aware 10:1 15:17 23:8 28:20,22 28:23 29:10 39:6 90:22 91:1 91:2 95:11,16 96:7,14 98:13 98:15,19 101:9 101:17,20,21 102:7 106:8 107:11 109:1,9 109:13,18,25 120:11 126:24 B back 13:3,6 16:12 17:12 20:9,16 22:20 24:12 26:4 29:16 44:24 45:6 50:3 52:8 55:1 60:4,18 64:3,11,19 69:2 74:10 76:3 81:9 81:23 84:8 88:20,23 94:3,9 99:24 113:23 133:12 background 10:12,19 16:12 29:25 67:19 bad 26:25 balance 63:8,22 80:10 118:6 | 121:11 balances 13:18 84:15 89:23 bank 13:20 63:7 63:21 92:18 bankruptcy 1:1 108:6,15,22 109:2 133:12 bargain 84:5 base 26:19,22 27:4 based 25:18 38:3 40:23 82:5 125:17 126:22 128:17 basically 23:7 115:24 basis 21:23 66:22 77:20 81:14 104:9 batch 12:22 Bates 82:14,18 120:1 bear 80:11 beginning 62:24 81:14 behalf 2:6,13,20 102:1 110:21 111:1 127:10 127:14 129:4 129:15,17 believe 10:24 12:7,12,16 13:4 16:18 33:3,5,24 34:2 35:8 38:4 43:13,17 50:10 58:22 82:5,8 84:21 88:8 93:13 97:10 99:8 107:3 109:15 112:19 123:7 believed 103:20 best 20:1 44:20 55:10 100:12 | 112:9,20 116:1 118:9,21 121:14,17,24 122:2,12 126:8 better 30:2 42:22 67:22 big 23:3 38:21 115:15 bills 14:6 109:3 bind 111:1 birth 10:16 bit 28:9 44:7 55:1 56:16 58:9,24 98:12 131:18 bits 7:14,17 Blair 32:6,6,7 112:7 blind 64:12 board 60:5 86:15 119:24 121:12 121:25 122:5,9 122:17 123:1,6 bonus 25:18,21 26:1,6,8,19,22 27:4 bonuses 108:23 book 113:1 booked 112:10 112:22 119:8 books 73:11 87:17 borrower 69:10 borrower's 69:5 boss 24:11,17 25:1 76:8 brackets 78:19 79:1 brand-new 111:20 Brandon 1:22 135:2,25 break 30:8 52:5 62:17 75:16,17 83:9,16 93:16 94:6 110:15 | briefly 10:12 16:12 brought 50:2 115:16 bunch 63:1 burn 82:11 business 14:12 64:5 buyouts 108:6 C calculated 124:11 calculating 73:24 call 26:19 34:23 37:7 38:1 45:11 45:13 61:22 66:4 67:23 71:5 72:5 74:11,11 74:20,21 75:5 75:23,25 79:20 92:2,3,6 93:21 93:25 99:4 100:12 106:14 106:16 120:23 125:25 126:14 129:23 called 26:21 62:12 65:14 74:14,15,24 84:1 92:4 111:15,22 calling 107:2 calls 126:4 Capital 1:6,9 14:22,23 15:4 27:23 85:5 108:1,16 117:2 care 38:11 carried 115:2 case 95:9 100:24 103:4 cash 12:21 13:21 21:24 22:6,18 22:19 23:1,4,4 |
|---|--|--|---|--|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|---|---|---|--|
| 34:17 63:8 66:22,25 67:2,5 67:5 69:1 81:11 81:12,14,19,20 109:4 125:25 126:4,14 categorize 24:6 cause 1:21 22:6 116:7 117:16 135:6,20 caused 39:16 92:12 124:22 cell 75:2,3,4,13 Central 136:2 CEO 13:23 60:24 Cert 136:1 certain 14:6,18 18:19 26:13 29:2 36:16 37:15 49:13 64:20 95:14 96:16 119:17 120:18 123:2 127:22 certainly 82:11 86:17 121:22 certificate 53:14 53:18,20 135:1 certified 16:19 135:2,25 certify 135:3,17 CFO 13:9,13,22 23:12 25:10 chain 59:4,12 62:5,15,24 85:21,25 86:3 86:13 90:4,5 chance 75:4,18 change 32:11 79:1,12 84:10 85:2,6 90:23 91:3 changed 58:4 123:6 changes 43:15 | 44:2 49:1 135:14 changing 57:4 98:12 107:18 characterize 24:13 111:13 charge 13:19 18:7 114:24 115:11 charged 10:10 charges 76:12 chase 15:9 check 60:12,15 64:19 93:15,16 102:23 105:8 checked 63:16,16 64:22 checking 64:24 checks 13:18 clarify 47:14 88:10 clear 6:20 113:12 clearly 38:13 clients 63:6 close 120:6 collect 28:21 collectibility 68:23 collectible 130:25 collection 30:14 collects 27:3 college 10:20 11:10,14 column 79:5,11 80:22,24 columns 78:14,15 Combs 1:22 135:2,25 come 84:5,14 85:2,10,11 comes 31:8 comfort 131:19 comfortable 50:23 coming 16:6 | 48:25 99:5,10 126:25 131:21 comma 15:4 comments 120:14 commingle 110:9 commission 136:4 common 40:10 communicate 23:17 communicated 23:23 communicating 23:24 communications 23:22 64:10 90:16 companies 52:14 company 39:10 44:13 compensate 40:15 compensation 25:17,21 26:1,6 26:20,22 27:4 39:9,12 competent 24:18 24:20,21 complete 72:10 completed 116:5 118:15 completely 17:3 47:8 114:24 completion 135:12 compliance 17:14 comport 44:20 compounded 80:13 computer 47:16 135:11 computerized 1:24 concern 131:2 | concerning 111:9 124:18 127:7 concerns 63:13 63:15 condescending 25:3 conduct 38:3 confess 82:23 confident 37:22 confirm 62:2 confirmation 92:15,17 confused 78:12 confusion 47:15 connection 116:9 117:7,10,22 118:3 124:23 consent 39:1,24 consist 26:1 constituted 116:12 118:2 consulted 46:13 contact 6:9,11 contending 96:4 context 31:13 44:1 59:25 86:12 continue 130:2,6 contract 131:20 controller 11:19 11:23 12:1,4,6 13:4 25:6 69:2 70:3,4,9,10 88:21 conversation 36:22 42:4 65:3 96:1,6,14 99:9 99:13 104:22 106:17,24 130:3,19,22 conversations 23:13 34:16,20 36:5,17 37:14 37:15 48:14 49:22 50:20 | 69:1 88:18 95:24 96:3,15 96:22 102:18 105:4,13,25 107:8,11,16 108:8,14 copied 64:12 86:6 copies 55:14 56:13 copy 83:17 copying 59:13 61:3 63:1 83:18 corporate 10:6 11:16 17:15,16 17:21 18:4 19:8 19:15 20:3,11 20:20 21:13 31:16,23 35:6 45:17 46:2 51:11,18 56:11 102:4 111:9 112:18,22 126:11 corporateacco... 111:22 correct 14:12,20 14:24 15:4,5,12 15:13,16,19,20 18:5,6 23:5,6 27:1,5 29:4 35:23 36:8,12 38:9 40:12,21 41:3,5,6,10,23 41:24 45:22,23 45:25 46:1 53:19 56:14 57:12 60:25 65:12 66:16,17 70:19,20,23,24 76:16 78:21 80:20,21 81:5 83:20,21 87:25 88:1 95:6,7 100:1,5,6,18,19 |
|---|---|---|---|--|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|---|---|---|
| 101:15,16,19 101:20 102:25 103:3,4 105:6,7 105:10,11 106:5,7 118:12 120:18,21 124:3 128:1,13 129:20 131:11 134:7 correctly 32:18 33:23 correspondence 123:3 corresponding 84:16 counsel 2:5,12,19 6:15 7:4,23,25 8:19,22 9:8,12 9:20 10:10 28:10,17 33:6 135:17 count 42:10 43:1 57:6 couple 83:19 course 6:9 46:18 55:3 103:23,24 104:13,19,23 courses 16:15,16 court 1:1 6:18 27:13 30:13,25 courteous 94:12 CPA 10:24 11:2 11:6,21 115:17 create 43:12,18 45:8 48:17 created 18:21 44:18,19,21 48:7 58:1 119:12 creating 13:21 111:18 125:22 126:20 creation 126:16 126:18 credit 91:18 | crunch 109:5 CSR 1:23 curiosity 76:6 current 11:2 currently 11:19 120:5 cut 15:9 <hr/> D D 1:22 135:2 Dallas 1:3,25 2:4 2:18 136:2 dark 94:17 date 10:16 19:3 26:13 32:22 34:21 43:16 50:8 57:24 58:7 78:17 79:9,21 80:6,13,13,14 93:25 105:4 107:1 dated 30:20 31:16 135:22 dates 57:22 Dave 8:24 34:18 34:23 38:13 46:7 111:8 112:6 Davenport 136:1 David 3:14 13:1 31:16 33:17 DAVOR 2:5 day 48:15 57:25 58:6 80:2 112:13 134:8 days 9:23,25 10:5 28:17 deaccelerate 107:13 deal 20:21 36:25 debtor 14:24,25 15:1,2,3,7,10 15:19,21 16:4 18:1 21:20,21 21:22 22:1,2,5 | 22:14,15,18 23:1 25:7,7 26:17 28:21 29:6 38:19 39:15 53:7 54:22 55:12 59:5,19 66:8,20 68:1 76:20 77:2 77:6,9 81:11,12 81:18,25 82:7 84:17 88:3,11 88:14 90:24 99:6 100:15 101:25 114:25 debtor's 40:16 68:18 77:4 86:16 debtors 117:12 Dec 4:3,11 December 11:11 14:2,5 15:6,10 15:21 16:3 24:22 60:25 61:6,12 62:10 65:14 66:3,7,18 66:24 67:13,16 67:20 68:1,8,14 68:21 70:22 71:4 72:4 74:10 75:19 76:4 88:12 93:21 98:21,25 100:25 101:11 101:19 102:7,8 102:19,20 103:20 105:3,3 105:18 125:20 127:6 129:24 decided 26:2,3 40:14 52:15,18 deciding 23:8 decision 29:14 105:2 declare 134:6 default 68:16,19 | 88:3 90:17 93:10,11 defaulted 67:22 defendants 1:11 1:20 2:6,20 95:11 96:4 defense 95:12 96:7,12 defenses 95:9 defined 114:3 definition 113:16 degree 10:22 deliver 117:17,22 delivered 116:8 116:11 117:25 118:1 128:18 demand 4:11 5:2 18:19 19:21,25 20:4,13,17,21 21:3,4,5,8,23 22:7,13 28:22 29:11,14 46:16 62:11 66:5 85:6 85:14 98:17 130:14 131:9 131:13 demanded 62:11 demanding 24:13 Denton 10:15 department 11:17 18:2,5,8 18:12 51:12 57:12 112:23 depend 18:17 depended 49:16 depending 73:16 depends 18:16 69:10 77:24 deponent 135:14 deposed 6:13 28:2 deposition 1:13 1:18 7:8,9 8:1,6 8:10,15,17,20 8:23 9:14 | 113:14 134:3 135:4,7,12,19 describe 12:18 53:16 described 17:17 99:9 116:16 119:7 description 14:1 110:3 detail 66:12 details 17:5 25:14 28:7 determine 97:6 97:25 102:11 determined 97:22 Dickman 136:1 difference 103:22 different 19:25 54:19 73:16 87:22 96:11 103:17 124:2 direct 27:7 directed 99:17,19 129:18 directing 48:16 101:4 direction 23:12 53:21 60:23 63:2 73:7 101:7 135:11 directions 48:25 directly 40:9,22 41:12 49:1 70:14,17 102:16 disciplinary 11:5 disclose 119:24 disclosed 97:15 97:21 133:17 133:22 discretionary 26:8 discuss 62:9 66:4 68:4,7 74:16 |
|--|---|---|---|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|---|--|---|
| 88:12 discussed 28:8 38:4 43:13 66:21 67:9 74:18,20 81:13 92:5 96:25 97:2 discussing 66:19 67:20 117:18 discussion 9:5 50:21 61:7 65:9 66:7 69:5,19 92:25 93:7 122:22 123:4 discussions 9:8 25:20 28:11,12 28:17 40:6 60:1 61:9,11 62:13 68:22 98:8 127:6 disinterested 135:8 distinct 29:3 45:24 DISTRICT 1:2 DIVISION 1:3 doctor 42:11 doctored 83:3 doctoring 42:24 57:4 document 32:25 47:2 49:19 72:8 76:10 82:13 86:1 88:7 111:19 119:8 119:25 documentation 9:16 documentations 47:8 documents 9:18 10:7 42:6 43:7 43:9 44:3 47:9 48:5,18 49:8,13 50:2,3,11 54:11 57:7,14,20 | 69:16 77:13 82:10,18 doing 6:7 43:8 45:20 74:4 dollar 19:7 40:2 48:15 49:2 50:9 Dondero 2:20 5:2 15:12 21:11,20 21:21 22:6,19 23:7,14,18,23 23:24 24:2,7 34:19 35:24 36:2 40:14,20 52:12,19,22 53:7 73:8 81:14 83:18 94:24 99:18 101:2,4 101:17 102:11 102:16 103:7 103:12,19 104:1,7,14 108:9 116:19 116:24 117:20 118:23,24 122:3,7 123:19 124:8,10,13,16 124:18,25 127:20 132:15 Dondero's 104:19 130:15 Donohue 59:13 59:17,22 62:25 63:21 64:3,16 64:22 65:5,9 92:18,19,22,24 93:8 door 35:1 draft 17:24 drafted 17:1,3 drafting 16:16 17:22,23 18:12 19:16,21 20:12 29:13 drive 54:9,16 55:14 | drukavina@m... 2:7 DSI 61:19 62:6,9 63:3,24 67:4 68:7,13,23 69:14 77:3 88:12,23 92:18 92:19 126:13 due 16:6 59:18 66:23 73:9,25 86:24 87:5,17 87:17,22,25 89:9 90:8 102:8 103:20 105:4,6 120:5,23 123:23 124:1,5 124:19 125:4 125:19 126:2 126:25 127:11 127:15 128:20 128:24 129:7 130:7 duly 1:19 6:2 135:4 duties 12:19 97:12 duty 20:25 <hr/> E <hr/> E-l-l-i-n-g-t-o-n 18:9 e-signature 47:10 47:12 48:1,4,5 48:8,9,12,18 49:9,15,18 50:1 50:13,17,23 e.g 120:6 earlier 43:14 45:7 99:8 112:12 113:13 120:14 123:15 125:7 126:12 129:22 early 116:5 128:19 | earn 26:23 educational 10:18 effect 54:11 67:21 68:15 effectuate 101:7 106:15 effort 97:6 efforts 102:10 either 18:21 29:13,20 31:1 34:17,23 37:3 46:7,13 50:1 54:12 58:20 62:6,9 71:4 84:24 99:15,17 110:15 124:24 127:19 129:24 135:18 electronic 54:22 electronically 56:3,12 Eliason 46:7 78:3 112:7 elicited 130:13 Ellington 4:3 18:9 60:4,9,12 60:15 61:10 email 2:7,14,22 3:14 4:3,7,21 5:1,5 23:17 31:12,15,20,23 32:1,4,20,25 33:3,25 36:3 37:10,19,25 38:14 41:17,21 42:5 48:20 50:11 54:11 59:4,12,22 60:1 60:2,3,25 61:2 61:6 62:4,8,15 62:24,25 63:11 63:14,15 64:22 82:16,19 83:2,6 83:11,11,12,18 | 83:23 84:19 85:25 86:3,13 86:22 90:4,5,12 92:22 108:12 111:8,21,21,25 112:3,5,13,17 120:2 122:19 123:5,18,23 126:7,8 136:3 emailing 90:8 107:2 emails 9:16,18 41:18 49:23 81:9 82:22 115:3 employed 11:21 70:18 employee 109:23 110:2,6 employees 16:3 108:19,24 109:10,13,14 employment 26:5 26:15 69:25 70:7 engagement 115:14 ensuring 131:19 entire 11:17 114:25 126:20 entirety 86:18 entities 15:11 21:16 22:6,12 22:19 70:18 81:15 101:5 124:2 129:4 entitled 82:12 entity 21:20,22 22:7 23:2 35:14 53:13 63:4,5 84:16 104:4 entries 78:13 80:23 entry 78:24 79:19 erroneous 122:5 |
|--|---|---|--|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|--|--|---|
| error 38:22 39:9 39:16,21,23 40:10 44:7 established 9:11 28:8 83:16 estimate 20:10 event 135:19 events 38:21 95:15 96:16 116:13 118:3 118:19 eventually 109:5 everybody 25:13 112:2 125:24 126:1,3,4 evidence 105:22 114:9 118:9,21 121:17 122:12 133:20 exact 25:25 36:5 37:14 48:5,13 107:1 117:12 Exactly 78:16 Examination 3:3 3:4,5,6 6:3 94:22 110:19 111:5 example 81:1 Excel 77:12,15 78:9 exchanged 108:12 excluding 28:16 29:18 execute 48:18 49:5 executed 18:24 47:9 130:15 executing 19:17 execution 18:13 20:12 32:15 exhibit 3:10,12 3:14,17,19,21 3:23,25 4:1,3,7 4:11,14,17,19 | 4:21 5:1,5 30:14,15,18,19 30:21 31:15,18 32:21 33:1 34:4 34:11 35:21 36:20 37:19 38:12 42:15,16 43:6,21 44:18 44:19 56:19,21 59:4,9 62:14,14 62:21,23 65:13 65:18,21 72:11 72:13,16 76:10 76:17,19 79:8 82:6 83:1,4,15 83:17 84:8,14 84:18,19 85:7 85:17,20,21,22 85:25 86:3,13 87:21 88:2,4,7 89:21,22,25 90:1,3 111:7 119:7,15,23 123:16,22 124:5 exhibits 3:8 30:6 42:17 43:4 44:21 45:22 46:19 48:11,19 50:13,17 52:8 55:17,24 56:25 57:16 58:10,25 113:13 existing 84:20 expect 85:16 expense 103:24 expertise 16:18 expires 136:4 Explain 19:19 explained 6:15 31:7 explicit 60:23 explicitly 32:5 53:1 expressly 71:14 | Expressway 136:2 extent 108:13 external 46:14 eye 6:9 <hr/> F <hr/> faced 11:5 facilitate 91:7 fact 21:18 49:5 57:15 64:15 65:1 67:13,16 99:22 121:21 128:23 130:13 facts 114:9 fair 17:5 21:19 22:3 23:21 35:5 42:20 70:14 95:25 96:8,21 96:24 97:18,20 98:6,7 99:25 100:20,23 101:8,12 103:5 105:16 106:4 108:4 116:2 133:20 fairly 36:15 faithfully 57:3 familiar 27:13 65:20 66:11 86:2,5 107:20 115:19 122:16 family 23:4 far 20:14,16 24:19,21 49:7 80:24 favor 130:15 February 12:2 26:4 fee 39:1,24 feel 86:18 fell 13:24 felt 104:25 figuring 93:17 file 56:13 | filed 28:24,25 29:6,8 30:13,24 files 32:25 filing 18:25 final 123:6 finance 10:22 financial 4:4 12:22 59:18 62:7 69:15 97:16,17 115:12,25 116:16,21 117:1,5,11 119:2 122:4 133:17,22 financials 12:23 37:18 41:8 60:11 86:24 118:11,14,19 121:3,7,20,25 122:8 find 31:13 72:8 83:8 93:24 94:8 102:23 finding 98:2 fine 47:8 48:2,4 86:19 finish 96:11 finished 31:10 finishing 46:14 firm 18:22 44:16 first 6:2 9:1 11:13 20:11 63:17 70:21 81:17 82:13 95:8 113:23 120:15 five 51:4 94:3 110:10 133:12 five-minute 93:15 110:14 fixing 55:15 flip 46:25 Floor 1:25 2:11 flow 109:5 | flows 63:8 focus 12:17 folders 18:25 folks 62:16 67:4 85:24 follow 47:23 60:5 60:9 72:5 follow-up 4:23 followed 104:11 following 47:22 follows 6:2 forecast 67:5 128:17 forecasted 67:8 forecasts 12:21 13:21 17:18 67:5,9 125:8,10 125:14,17,18 125:23 126:7,8 126:16,19 130:3,6 foregoing 134:7 135:4 forgive 97:10 forgiven 95:14 96:16 109:10 133:3,6,11 forgiveness 133:15,21 form 14:14,21 15:24 16:22 17:6 18:14 19:11 20:23 22:8,21 24:8,15 28:3 34:6 35:10 36:13 37:11 38:7 39:17 41:1 41:13 45:3 46:4 47:20 48:22 49:10,20 50:4 51:14,20 52:1 53:9 55:5,19 56:4 58:16 65:16 69:8 70:15 73:20 |
|---|--|--|--|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|---|--|--|
| 74:5 75:7 77:22 78:10 80:3,16 82:1 87:7 88:15 89:2,15 96:18 102:2 103:13 105:19 106:18 113:9,19 129:21 format 77:12 formatting 79:3 82:5 forth 64:11 forward 64:2 94:16 forwarded 92:15 92:17 found 54:9 foundation 75:11 four 9:8,12 100:5 fourth 107:25 frame 17:12 66:19 69:7 73:16 Frank 4:21 7:10 7:21 8:1 13:7,8 23:13 24:5 34:19,23 35:24 38:14 52:19 53:20 60:10 63:16,18 64:10 64:23,23 65:1 67:3 71:5 73:8 74:14,15 84:1,7 91:10,22 92:4 99:5,17 100:13 101:2 102:15 104:4,21,23,24 106:14,20 107:2 112:6 124:24 125:25 126:13 128:9 128:14 Frank's 115:16 frankly 104:24 fresh 111:20 | Friday 9:1,4 function 12:21 functions 117:15 fund 1:9 27:23 38:24 39:2,2,8 85:6 funds 38:23 59:18 119:17 120:8 further 3:5 10:23 32:15 62:1 92:13 110:19 133:24 135:17 future 14:7 16:5 120:5 <hr/> G gears 58:24 general 34:21 46:18 54:20 69:6 90:20 generally 13:17 13:24 19:13 34:8 35:2 43:10 72:22 81:20 96:13,15 120:11 getting 11:20 18:24 48:11 60:2,3 81:12 101:3 give 20:10 31:13 74:16 110:4 129:3 given 49:18 101:6 122:9 123:1 gives 16:19 giving 53:21 54:5 Global 38:23 39:1 go 10:12 17:5 44:4,24 48:1 55:1 62:24 64:2 67:4,5,11 73:8 | 78:22 107:23 113:10,20,23 114:11 118:22 133:12 goes 94:9 99:3 going 6:25 17:12 20:9,16 26:23 27:3 29:16 30:6 30:10,14,18 34:3 40:6 42:7 42:20 44:2 50:22 52:8 54:18 56:20 57:2 58:24 59:3 59:3 60:5,9 64:19 65:13 67:7 71:6 72:8 72:11 74:10 76:10,20 78:7 81:9 82:10,11 82:13,25 83:1 84:8 85:20,21 87:19 88:2 93:20 95:2,23 105:23 111:10 131:1,2 good 6:4 24:17 26:24 94:23 127:8 governs 26:11 graduated 10:21 11:9,12 great 53:20 greater 16:19 group 14:4 17:13 19:9,10,16 20:3 31:24 35:7,22 37:22 40:11 43:14 45:7,18 46:3 49:16 51:18 56:11 73:19,23 111:21,25 112:3,5 117:16 126:12 | guarding 24:7 guess 89:22 guys 126:14 <hr/> H H-i-l-l-i-s 32:12 half 81:17 hand 59:3 82:25 handed 88:6 handle 20:12 50:8 handled 20:4,21 happened 20:7 21:8 36:11,11 37:21 101:1 131:17 happening 20:11 61:5 happy 23:3 93:22 HARDT 2:3 HARR 2:3 Hayley 32:2,14 46:7 78:3,6 112:6 Hayley's 46:8 HCM 4:4,9 HCMF 3:25 4:1 HCMFA 3:15 4:4 27:10,22 28:1 28:13 29:6 30:12,19 32:13 38:19,23 39:12 40:1,15 53:25 59:18 60:19 62:7,11 63:6,22 64:18 66:5 69:15,20 70:7 70:10 85:18 87:5 99:4 100:2 110:22 111:1,1 111:11 115:1 117:4,16 118:15 120:6 120:23 121:25 124:2,5,19 | 131:4 HCMFA's 39:8 87:17 117:11 117:23 118:6 118:18 119:1 HCMLP 3:15 4:19 5:6 32:13 60:24 64:4 86:24 87:5,18 111:11 120:6 120:23 124:19 129:2,18 HCMS 2:20 94:25 98:16,24 100:1,22,25 101:10,18 102:1,19 105:18 107:5 127:10 128:23 129:6,18 131:13 HCRE 2:20 94:25 98:17,24 100:1,22,25 101:10,18 102:1,20 105:18 107:3 127:10 128:23 129:6,18 131:13 hear 72:1 heard 40:17,20 held 12:8 133:11 hell 75:4,10 help 76:22 78:13 93:17 105:23 helped 12:20 Hendrix 1:14,18 5:5 6:1,6 30:10 30:23 56:19 57:2,8 62:23 65:13,21 76:19 78:12 79:15 86:3 90:3 93:13 94:5,23 110:20 |
|--|---|---|--|--|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|--|---|---|
| 111:6 134:13 hereof 80:13 hereto 135:16 hi 60:4 higher 89:20 Highland 1:6,9 10:2 11:13,21 12:5,19 13:10 14:4,4,11,22,23 15:3 16:10 17:10,13,21 18:1,11 21:5 25:6,15 26:4,9 26:24 27:2,2,22 28:12 51:7,10 51:19 65:14 66:4 71:7,11 81:10,18,23,23 85:5 87:25 92:17 107:21 108:1,16,17,21 108:22 109:2,2 109:9 110:21 117:1 119:24 133:5,10 Highland's 7:23 7:25 8:19,22 114:20,23 116:4,16 131:24 132:3,7 132:13,17,22 133:1,15,22 Hillis 32:12 history 11:9 Hold 62:18 hope 57:13 97:13 hopefully 82:11 hoping 68:15 house 75:1 hundreds 50:7 51:8 hypothetically 22:4,17 hypotheticals 21:17 | I i.e 114:9 idea 58:2,7 75:12 75:24 89:13 93:1 105:17 106:3 identification 30:16,22 31:19 42:18 43:5 57:1 59:10 62:22 65:19 72:14 76:18 83:5 85:23 88:5 90:2 identifies 123:23 124:1 identify 112:2 125:18 identifying 66:23 image 47:2,5,19 48:2 imagine 15:7 immediately 61:14 important 93:14 Impressive 11:23 include 71:18 72:10 100:1 118:25 121:13 130:7 included 15:14 16:9 31:24 102:5 111:25 118:6,13 121:21,22 122:10 123:12 124:4,5 127:2 includes 63:5,7 including 88:11 124:2 income 63:7,21 incoming 67:7 incorrect 123:9 124:14 increase 94:19 incumbency | 53:13,17,19 INDEX 3:1 indirect 27:7 indirectly 70:12 individualized 131:14 Info 3:25 4:1 info@dickman... 136:3 information 4:9 29:25 34:13 61:14 63:3,7 64:17 65:5,11 69:12,15 84:6 86:15 116:3 127:2 130:10 informed 112:21 125:24 126:1 initiated 74:11 92:3 ink 49:8,13 55:3 55:8 ink-signed 55:11 input 29:25 88:24 installment 128:24 129:7 instance 1:20 20:6 23:8 35:21 instances 24:1 40:1,24 instruct 127:11 127:15 instructed 128:9 128:11 instructing 101:18 instruction 72:2 74:17 76:8 100:16 101:14 101:22 103:12 129:4,11 instructions 24:2 24:3 32:16 69:14 76:1 | 100:21 101:9 103:19 129:3 instructs 7:5 insurance 39:10 insurer 39:8 intend 113:5 interco 32:14 34:11 intercompany 17:22 18:13 19:17 20:4,13 20:16 21:3,8 34:12 35:7 36:19,25 37:12 40:24 53:8 111:15,16 124:23 125:4 126:25 133:6 interest 19:7 43:16 49:2 68:18 73:25 78:14,16,24 79:20,22 80:11 85:15 125:4,19 interested 84:9 135:19 interjects 64:4 intermediary 24:3 internal 18:21 41:8 46:13,20 69:19 internally 77:1 investigation 97:5 invoice 108:13 involved 18:12 19:16,20,24 36:21 39:20 40:9 126:14 131:8 involvement 19:10 irrespective 26:16,24 | IRS 49:3 issue 79:3 95:14 96:16 97:25 98:16 114:2 118:8 131:2,2,6 132:5,9,19 issued 131:9 issues 40:7,10 60:16 61:21 115:4,15 J J-F-O-R-S-H... 44:10 Jack 59:13 60:4,8 64:6 65:2 92:18 James 4:8 5:1,2 61:14,15,18,21 61:25 62:3 Jan 4:8 5:2,5 January 10:17 24:24 28:20 29:6,11 62:25 64:15 71:25 88:2,21 89:9 90:5,7,17,22 91:4 93:8 106:10,25 127:23 128:8 128:15 jealousy 24:7 jerk 24:12 JFORSHEE 44:10 Jim 2:20 21:10 23:14,18 34:19 35:24 52:19,20 54:2 63:2 64:10 67:3 73:8 84:4 99:18 101:2,4 102:16 104:1,7 104:14,22,25 105:1 125:25 Jim's 99:21 jive 87:20 |
|---|--|--|---|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|---|---|---|
| jmorris@pszjl... 2:14 job 6:20 11:14 17:9 20:25 24:19,22 43:11 45:1,14 103:1,6 103:10 John 2:12 4:7 8:24 95:21,23 97:4 JONES 2:10 June 86:25 87:6 116:5 120:23 | 47:16 48:6,6 50:10 52:18,25 57:25 59:6 76:15,21 78:15 82:15 89:17 92:18,19 99:21 101:4 103:24 104:17 107:19 108:7,25 110:2 117:4 118:15 120:22 121:6 121:19,20 122:15 124:4 128:7 130:24 131:12 knowledge 27:6 36:1,4 37:14 40:11,13 52:15 69:11 77:7 108:4 112:9,11 112:20 116:1 121:14 122:2 known 67:14,17 97:11 KOPF 2:3 Kristin 1:14,18 5:5 6:1,6 32:1,2 32:14 57:8 61:20 134:13 | Lawler 109:20 109:23 Lawn 2:17 lawsuit 28:24 29:5,8 lawsuits 28:1,9 28:13,25 29:17 29:21 30:1 lawyer 9:4 lawyers 44:14 lay 67:7 leading 39:20 108:15,21 109:1 learn 95:20 ledger 76:12 left 61:9 87:15 legal 7:23,25 10:9 16:13 17:14,25 18:2,5,11,21 19:10,16 28:10 46:14,20 72:21 lend 21:22 23:1 110:22 length 93:25 let's 10:12 11:9 12:17 14:8,18 21:17 30:8 34:25 44:24 45:13 47:14 54:19 55:1 72:10 78:1 99:24 115:11 120:23 letter 4:11 65:14 115:14,23 letters 29:11,14 115:14,20 letting 92:18 liabilities 118:14 liability 40:16 118:6 license 10:24 11:2 limited 107:25 | lines 61:7 listed 78:17 litigations 27:8 little 28:9 44:7 55:1 58:9,24 78:12 94:17 98:12 131:18 live 10:14,15 LLP 2:17 loan 3:15,25 4:1 18:18 31:5 32:14 33:25 34:11,12,14,25 35:14,17,17,22 36:19,25 37:6,7 37:17,17 38:25 39:12 40:15,21 45:13,15,18,22 46:12,14 48:15 49:1,4,5,24 50:9 58:5 72:25 76:24 79:21 80:6,7 87:22 103:22 104:6 104:20 111:15 111:16,18,20 112:10,23 113:2 119:9 124:23 125:4 133:6 loans 35:9,12 37:4,6,13,22 38:6 39:4 41:9 41:12,19 48:14 48:17 50:7,19 50:22 51:8 53:21 66:23 67:8 98:16,17 98:17,20,25 106:9 107:13 109:9 110:5,6 126:2 131:19 logically 36:10 40:23 71:18 logs 75:19 | long 7:20 21:24 74:21 75:6 110:4 look 30:17 54:15 57:7 75:18 77:2 78:11 80:21 93:20 94:6 looked 31:5 123:16 looking 56:21,23 58:10 79:24 81:10 86:21 87:14 119:23 looks 60:24 64:9 76:23 77:4 79:19 loosely 17:2 lot 28:25 lots 40:6 LP 15:4,15 27:20 27:23 70:1,4 |
| K K-l-o-s 8:25 keep 29:1 77:6,9 95:4 125:24 126:1 kept 54:22 55:11 56:12 77:5 121:20 kind 11:5 18:4 23:21 24:6,11 34:3 50:3 54:19 81:13 122:21 Klos 3:14 8:24,25 9:5,12 13:1,6 13:10 25:10,21 29:24 31:16 33:17 34:10,18 35:21 36:18,24 37:20 38:12 46:7 97:2,3 111:8,13 112:6 Klos' 13:2 41:17 knew 40:3 126:3 128:19 know 6:24 19:20 19:23 20:19 25:14,25 28:7 33:10,11,13 36:11 38:17,21 39:22,25 40:1,5 43:21 44:11 | L L.P 1:6,10 labeled 82:15 labels 30:7 laid 24:12 land 84:5 landline 75:2 large 35:8 lasted 75:6 late 126:9 Lauren 4:22 86:21 law 2:5,12,19 6:18 18:22 44:16 | | | M ma'am 31:21 57:7 87:1 111:4 machine 1:24 maintain 6:9,10 maintained 77:1 82:7 maker 19:4,5 21:3 43:15 132:1 making 13:20 21:5 81:7 99:20 101:2,25 103:22,23 104:3 management 1:6 1:9 12:20 13:14 13:15 14:2,24 15:4,22 17:17 27:23 85:5 108:1 115:13 115:19,23 manager 12:8,12 |

Kristin Hendrix - October 27, 2021

| | | | | |
|--|--|--|--|---|
| 12:18 manual 104:9,12 March 12:2 mark 59:3 marked 30:15,21 31:18 42:17 43:4 56:25 59:9 62:21 65:18 72:13 76:17 83:4 85:21,22 88:4 90:1 113:13 119:14 material 97:22 98:1,4,6,10 104:6 120:3,4 133:16,21 materials 121:12 maturity 80:13 MBA 10:23 11:20 mean 7:17 13:15 14:22,23 15:3 19:1 35:16 48:20 57:24 68:24 78:13,15 87:11,24 111:16 meaning 27:20 27:22 54:25 70:18 means 27:15 35:15 58:22 71:16 111:18 meeting 34:17 67:2 meetings 66:22 66:25 memorandum 48:20 memory 9:17 19:14 20:9 29:3 29:7,17,19,23 32:20,24 34:3 37:9 38:2 41:22 42:1,20 43:7,10 | 45:24 47:4 48:10,13 50:15 51:1 53:23 54:4 54:10 57:23 58:9,20 69:18 72:24 74:4 81:6 81:17 86:8,10 90:15,20 91:21 92:6 mentioned 11:24 13:14 22:12 25:9 29:10 41:7 44:25 45:21 51:6 64:21 125:7 merit 25:17 met 108:11 metadata 42:21 42:21,24 43:21 43:24 44:8,24 56:15,20 57:4 Michael 2:18 94:24 michael.aigen... 2:22 mid 128:19 middle 89:8 million 30:12,20 32:13,21 33:1 33:19,20,25 34:5 35:3 36:25 37:12,12 38:18 38:22,25 39:3,7 39:8,11,23 40:15,21 42:15 42:16 43:2,3 58:5,11,13,13 66:9,13 81:1,1 81:2 85:1,6,9 87:3 90:23 91:3 91:23 110:23 111:10 112:14 113:14,14 120:24 121:13 122:10 123:5,9 | 123:12 124:11 mind 71:18 minute 30:8 minutes 94:3 mischaracteriz... 116:25 Mischaracterizes 41:2 misleading 42:9 missed 88:25 105:12 misspeak 30:5 mistake 51:12 113:1,18 114:2 116:20 117:21 118:25 119:12 125:3 132:9 mistakenly 51:25 mistakes 51:17 51:19,22 120:19 modified 44:19 57:8 moment 72:9 Monday 9:2 monetize 68:2,10 money 13:21 21:11,13,15,21 21:21,22 22:5 34:24 35:13 37:7,17 53:21 54:23 81:15,19 81:22,24 92:16 111:19 month 106:10 months 40:7 morning 6:4 9:3 67:11 82:14 125:6 Morris 2:12 3:6 4:7 7:3 8:24 9:6 9:9 14:14,21 15:24 16:22 18:14 19:11 20:23 22:8,21 | 24:8,15 28:3 30:2 31:10 34:6 35:10 36:13 38:7 39:17 41:1 41:13 42:9 45:3 46:4 47:20 48:22 49:10,20 50:4 51:3,14,20 52:1 53:9 55:5 55:19 56:4 57:17 58:16 62:18 65:16 67:10 69:8 70:15 73:20 74:5 75:7,11 77:22 78:8 79:7 79:9,13 80:3,16 82:1,14,16,23 83:2,6,10 85:25 87:7 88:15 89:2 89:15 93:22 94:15,17 95:21 95:25 96:2,6,18 96:23 102:2 103:13 105:19 106:6,18 111:6 113:11,22 114:13,19 118:12,23 119:5 121:19 122:15 128:3,4 129:22 133:24 mouth 23:21 move 9:10 21:11 21:13,15 94:16 109:8 moved 23:4 multiple 54:19 MUNSCH 2:3 <hr/> N <hr/> name 6:5 32:8 44:12 57:18 94:24 109:24 110:3 | Nancy 108:9 NAP 27:14 native 78:9 NAV 38:22 39:9 39:16,20,23 40:10 107:21 108:5 near 14:7 necessarily 17:23 19:10 103:25 need 9:16 14:6 19:2 21:11 25:14,25 34:24 52:6 54:1 59:1 81:19,20 82:12 86:19 93:17 needed 21:21 22:5,18 23:1,4 40:1 53:12 81:11,14,23 104:25 needs 104:7,8,13 negative 78:20,25 79:2 never 40:19,20 49:12 51:12 55:14 68:17 70:14,17 96:25 97:2 101:6,6,14 103:6 108:11 119:8 new 2:11 21:14 32:14 34:11,25 36:19 45:9 111:15,16,18 NexPoint 5:6 15:14,17,22 16:5 27:11,15 27:18,19,20 28:2,13,21 63:6 63:22 64:18 66:8,12,20 67:13,22 68:2 68:15,19,24 69:15,20 70:1,4 |
|--|--|--|--|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|--|--|--|--|
| 70:22 72:12 76:24 77:7,13 77:20 80:20 81:7,22 84:9 85:2 88:3 90:9 90:17,23 91:16 91:23 92:13,16 93:10,11 120:6 123:24 127:14 127:16 128:23 129:6,18 131:13 NexPoint's 16:5 16:9 Nope 8:7 76:7 91:12 normal 34:16 103:23,23 normally 107:15 North 1:24 2:3 10:22 11:13 136:2 NORTHERN 1:2 note 3:10,12,17 3:19,21,23 4:14 5:3,6 14:19 15:18 16:10,21 17:1,3,6 18:16 18:19 19:22,25 21:4,23 22:7,20 23:9 28:21 30:11,19 31:8 32:15,21 33:2 33:20 35:3,18 42:15 43:2,3,11 45:9 46:16 56:21,22 58:11 58:13,13 66:9 66:13,16,20 67:13,22 68:2,5 68:8,10,16,19 68:23,24 71:13 71:19 72:6,11 72:12,16,20 73:4 76:13 77:7 | 80:9,10,14,20 81:8,23 85:14 90:18 91:16,19 91:23 92:14 127:16 133:10 notes 4:12,19 14:9 16:16 17:22 18:13 19:17,21,21 20:4,13,17,22 21:4,8,14,14 22:13 27:3 28:14 30:24 31:1 38:11 41:7 42:7,22 43:12 45:2 46:21,22 47:6 50:1 52:10 52:16,17,24 53:1,8,25 54:5 54:12,23 55:3,8 55:11 56:2,8,10 59:2 62:11 65:15 66:5 69:21 73:10 77:10 84:16 85:12 95:14 96:16 97:10 111:2 113:6,11 113:12,16,18 114:2,7,16 116:7,11,15,25 117:18,22,25 118:1,7,18 119:1,12 120:6 121:15,21,22 122:11 123:13 124:6 125:19 126:25 127:12 127:24 128:8 128:21 130:8 130:14 131:5,8 131:9,13,14,25 132:5,9,15,19 132:24 133:3 133:16 | notice 88:3 89:8 notices 28:22 noting 14:5 November 59:12 61:6 62:6,10 66:19 67:12,19 68:1,7,14,21 71:4 72:4 74:10 75:18 76:3 93:21 127:6 128:20 129:24 135:22 November/Dec... 125:14 NPA 4:17 27:18 27:19 86:24 99:4 100:3 number 79:2,6 79:11,18 80:23 84:10,13 85:2,9 87:20,21 89:14 89:18,20,21 111:7 120:1 123:5,9,12 124:2,11,14,17 numbered 1:21 numbers 26:1 78:20 80:21 84:15 NY 2:11 <hr/> O <hr/> o0o-- 1:4 Oak 2:17 oath 6:17 95:5 object 113:19 114:8 objecting 114:10 objection 7:3 14:14,21 15:24 16:22 18:14 19:11 20:23 22:8,21 24:8,15 28:3 34:6 35:10 36:13 38:7 | 39:17 41:1,13 45:3 46:4 47:20 48:22 49:10,20 50:4 51:3,14,20 52:1 53:9 55:5 55:19 56:4 57:17 58:16 65:16 69:8 70:15 73:20 74:5 75:7 77:22 80:3,16 82:1 87:7 88:15 89:2 89:15 96:18 102:2 103:13 105:19 106:6 106:18 113:8,9 114:17 118:9 118:21 119:3 121:17 122:12 129:21 objections 7:5 obligations 14:19 16:6,10 118:7 132:1 obligor 15:18 obviously 14:11 35:6 59:1 occasion 22:18 occurred 95:15 96:4,17 97:7 106:17 Oct 4:22 October 1:15,21 86:22 94:9 122:17,19 office 10:1 34:1 54:8 57:3 officer 52:13 69:25 70:7 officers 109:10 109:13 oftentimes 13:23 34:23 oh 67:21 okay 6:11 7:1,7 | 25:3 28:19 30:5 31:23 32:11 33:22 34:3 36:1 38:2 39:14 42:13 43:6 49:25 58:23 60:11 62:1 63:17 70:25 79:25 84:8 85:1 89:24 93:7 94:1 110:17 112:8 113:11 115:17 118:18 119:5 121:13 123:15 126:15,22 129:13 130:19 131:23 134:2 once 104:5 ones 53:2 109:18 ongoing 77:20 oOo-- 134:5 open 120:5 opinion 98:5 opposed 23:23 39:12 49:8 52:12 98:17 oral 91:25 95:9 95:13 96:4,8,12 96:23 97:6,9,11 97:20,25 98:9 132:20 orally 37:10 50:16 order 97:6 ordinary 103:23 104:13,19,23 original 30:11 54:23,25 55:11 originally 48:7 outcome 27:8 outgoing 67:7 outside 18:21 89:6 outstanding 66:5 80:11 120:4 |
|--|--|--|--|--|

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|--|---|---|
| 121:21 131:19 131:22 overdue 60:19 overhead 103:24 104:3 oversaw 12:22 115:1 overseeing 117:14 owed 54:23,24 59:18 84:16 108:23 owing 123:23 124:1 | 17:9,13 25:17 26:8 27:4 44:8 70:13 97:11 103:5,10 107:15 109:11 120:12 130:23 133:7,11 participate 126:15 particular 17:13 52:11,13 56:8 81:18 98:19 parties 21:12 99:21 135:18 135:21 Partners 2:21 94:25 partnership 107:25 pass 94:14 passwords 47:17 patient 25:1 pattern 38:3 Paul 109:16,20 109:21 pay 14:19 21:4 21:12,13 22:7 22:13,20 39:2 40:1 68:24 69:20 108:17 108:23 109:3 payable 14:8,16 51:24 120:5 payee 133:11 payment 16:4 32:17 67:17 70:22 72:6 88:13,25 90:8 92:8,11,12,15 92:17 93:9 100:25 101:15 101:24 103:6 103:11,18,20 103:22 104:3,6 105:12,14 | 106:20 107:4,5 107:7,9 124:21 124:22 125:3 127:15 129:14 129:16 payments 13:20 66:23 67:8 71:6 71:10,16 73:3,4 73:9,12,18,25 74:17 76:13 78:17 81:7 98:20,24 99:5 99:10,13,16,20 99:21 100:14 100:17,18,21 100:24 101:3,4 101:7,10,13,19 102:1,8,11,19 102:23 103:2 103:15,24 104:18,20 105:5,9,17,25 106:9,13,25 107:12 126:2 126:24 127:7 127:11,18,23 128:7,12,15,20 128:24 129:7 129:10,19 130:7,14 131:21 PC 2:3 PDF 30:13,24 58:22 penalty 6:17 134:6 people 37:22 47:18 61:3 73:16 76:14 perceived 120:19 percent 49:14 80:12 performance 26:16 period 14:2 15:6 | 107:21 108:5 108:16,22 109:1 125:15 135:15 periodically 23:18,19 perjury 6:17 134:6 person 13:18 23:8,18 37:25 38:1 44:11 46:6 131:23 132:3,7 132:13,17,22 133:1,14 135:8 personal 10:5 personally 23:17 73:13 101:20 101:21 114:24 123:19 130:2 phone 38:1 71:5 72:5 74:20,21 75:2,3,5,5,14 75:19 76:15 92:2,3,6 93:15 93:21 94:6 99:4 100:12 picking 79:20 pictures 47:11 pieces 7:14,18 pile 58:25 111:7 pin 21:18 pinpoint 90:21 pique 76:6 place 135:8 Plaintiff 1:7 2:13 play 27:3 29:13 114:22 115:6 117:7,10 126:18 please 6:24 10:13 10:16 11:8 32:13,15,16 42:11,25 61:20 61:22 62:2 63:3 64:5 66:10 | 75:20 89:25 122:18 point 42:2 44:14 55:2 66:16 69:24 70:6 policy 104:9,11 104:15 pop 84:5 portion 8:9 position 9:7 12:8 110:4 positive 79:6,11 79:18 possible 32:17 36:21 58:15,18 65:1 93:6,19 95:4 109:21 possibly 41:20 55:21 58:7 73:8 104:22 postsecondary 10:19 potential 16:4 68:4,8 potentially 25:19 34:19 95:14 97:10 practice 17:20 18:11,18,23 34:16,21 48:17 49:7,9 50:20 53:7,12,16,17 prep 32:15 preparation 7:8 9:13 prepare 16:20 45:8 84:18 130:2 prepared 16:25 42:12 46:19 54:6 76:12 77:3 84:21 86:15 128:18 preparing 95:22 97:17 131:24 |
| P | | | | |
| P.M 1:22 134:4 PACHULSKI 2:10 page 3:2,8 46:25 78:23 79:4,8 80:22 100:8 119:25 120:15 paid 14:6 26:13 39:8 51:25 78:14,14,15,24 79:5,11 80:22 109:6 paper 34:25 37:6 45:14,18 49:1,4 49:24 50:22 54:22,25 55:3 55:14 56:13 papered 35:14,16 37:16 45:22 46:3,12 50:7 51:7 54:13 55:18 56:10 57:15 58:5 72:21 papering 35:17 45:13,25 72:25 paralegal 82:17 paren 120:5,6 part 7:9 16:2 | | | | |

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|---|---|---|
| prepayments 81:25 | privy 64:9,11 69:19 | 68:5 71:13,19 72:11,12,16 76:13 77:7,10 80:9 81:8 113:6 113:11,12,16 114:2,7,16 116:7,11,15 117:17,22 118:7 119:12 122:11 124:6 | 19:12 20:19,24 22:9,22 24:9,16 28:4 29:5,16 34:7 35:11 36:14,23 37:1 38:8 39:18 41:2 41:14 45:4,5 46:5 47:21 48:23 49:11,21 50:5 51:15,21 52:2,4 53:10 54:18 55:6,15 55:20 56:5 58:17 65:17 66:10 69:9 70:16 73:21 74:6 75:8 77:23 80:4,17 82:2 84:14 86:9,19 86:20 87:8,19 88:16 89:3,16 95:10 96:10,19 100:9 102:3 103:14 105:20 106:19 113:9 113:24 124:17 127:8 128:5 | 49:2 80:12 ratio 107:21 108:5 re-up 86:16 reached 108:5 read 7:9 8:9 32:18 82:21 86:17 119:25 reading 81:9 ready 94:16 real 11:14 really 35:13 67:21 reason 6:23 22:23,25 52:11 52:13 56:1,6,7 72:7 77:3 82:5 82:8 101:13 129:13,16 131:1 recall 7:19 10:8 21:6 34:15,20 36:16 37:2 44:11 46:10 50:14,20 51:17 51:23 52:4 55:25 56:7 59:22,25 60:2,3 60:8,10 63:11 64:1 65:3 66:7 67:3 68:22,25 69:22 72:3 73:1 74:11 83:22 84:4,23,25 86:12 88:17 91:25 92:3 93:5 93:7 102:21 104:21 105:15 107:6 108:25 109:14 112:3 112:13,15,17 116:4,15 118:5 119:5,8,19 120:16 123:4 123:15 127:5 |
| presence 25:4 | probably 9:15 17:2 49:14 50:6 58:22 61:9 63:15 99:15 109:8 126:13 | prompt 128:14 prompted 83:22 prospect 53:20 provide 7:12 9:19 15:21 30:11 42:21 59:17 63:3 64:5 64:16 119:16 121:25 provided 17:24 33:5,9,10 61:14 70:12 89:17 121:11 122:5 129:11 135:15 provides 120:7 providing 15:10 54:8 65:5 public 16:19 pull 119:14 pulled 49:3 purpose 86:12 125:22 purposes 39:5 98:1 126:23 purview 89:6 put 23:20 84:25 PwC 97:21 98:1 117:22 | questions 6:21,24 7:6 8:8 61:21 95:2 110:16 115:4 133:24 quick 52:5 95:4 107:23 quickly 6:16 109:8 quite 36:21 41:20 104:24 quote 120:3 | |
| present 9:4,6,12 24:5 45:24 90:15 97:3 | proceed 61:20,25 proceeding 46:20 proceedings 95:1 95:3,12 process 31:7 32:16 45:11,12 120:12 produce 78:9 produced 1:18 17:24 33:15 34:1 59:4 67:10 76:20 82:14,19 125:6 product 115:13 production 10:1 33:15 profitability 26:25 program 47:25 programs 47:16 projections 17:18 promised 39:2 promissory 3:10 3:12,17,19,21 3:23 4:12,14 5:3 14:9 15:18 16:10,16,20 17:1,3,6,22 18:13 19:17 27:3 28:13,21 30:11,19 31:1,8 32:21 33:2 35:18 38:11 42:7 43:11,12 45:1,9 47:6 52:10,24 53:1,8 53:25 54:5,12 54:23 55:11 | Q qualification 16:20 question 7:1 14:10,22 15:25 16:23 18:15 | R R-o-e-b-e-r 32:10 raise 131:1 raised 95:12 range 89:10 rate 19:7 43:16 | |
| presented 116:1 presenting 46:14 97:18 preserve 78:8 pretty 14:11 109:8 previous 100:9 previously 17:24 48:25 131:9 Pricewaterhou... 116:9,12 117:5 117:17 118:2,5 130:20 principal 30:12 78:14,17 79:5 79:11,23 80:10 89:23 121:14 122:10 124:5 124:19 125:3 125:18 130:14 print 56:1 printed 42:8,12 42:24 47:18 55:18,22 56:7 57:4,21,22,24 57:25 58:11,14 58:21,22 printing 55:23,25 printouts 42:21 prior 9:25 10:4 19:17 28:11 35:24 40:25 55:2 65:23 71:25 86:9 96:6 105:3 108:6 124:24 127:19 128:12 133:12 privileged 9:8 95:24 | | | | |

Kristin Hendrix - October 27, 2021

| | | | | |
|--|--|--|---|---|
| 129:25 130:17 131:5 133:10 recalling 109:16 Receivable 4:19 receivables 130:25 131:22 received 63:13 64:21 71:5 129:2 receiving 32:4 124:23 recipient 60:25 recognize 44:12 recollection 20:2 21:7 38:20 52:21,23 54:14 55:10 64:13 67:12 77:13 100:11 106:24 107:2,8 108:2 121:24 126:9 reconciling 13:20 record 7:15,16 30:8,9 44:4,6 52:6,7 53:3 56:18 62:19,20 72:10 75:5 78:8 82:19 83:13,14 93:20 94:4,21 98:14 110:18 recorded 73:11 81:24 recording 73:18 records 10:6,6 59:18 62:7 64:5 73:12 reduced 135:10 refer 99:25 reference 71:13 119:1 121:2,6,9 referenced 34:5 84:6 referencing 33:25 121:10 referred 96:2 | referring 66:25 100:2,5 reflected 118:7 123:12 reflecting 43:15 refresh 9:17 42:1 42:20 69:18 108:1 regarding 86:1 90:17 107:12 regardless 99:16 regularly 23:24 reinforces 41:8 reissue 21:14 related 9:13 21:11 33:1 38:22 57:21 95:9 96:7 98:16 99:21 135:20 relates 32:21 64:17 relation 115:7 relieve 93:10,11 rely 42:8 remember 19:19 20:14 21:3 28:16 30:25 31:3,4 32:4 41:19 54:7 55:23 61:2,5,8 64:23,25 65:4,8 65:23 66:18 67:20 74:21,24 85:10 86:14 90:5,7,12 100:13,14,16 100:20 106:16 109:15,24 110:3,5,6 remotely 6:8 renewal 120:12 reorganized 25:7 25:15 26:17,24 27:2 rep 115:13,19,23 | repaid 23:10 repay 69:6 repeat 14:10 22:10 28:15 44:22 66:10 rephrase 6:25 report 12:25 25:9 25:12 114:25 115:25 117:14 123:6 reported 1:23 13:6 36:22 reporter 135:1,3 135:15 reporters 27:13 reporting 12:22 12:23 13:22 reports 127:3 repository 54:22 55:9 represent 27:10 46:25 57:3 83:1 94:24 107:23 represented 2:4 2:11,18 93:5 representing 42:23 request 4:9 60:5 84:22 requested 63:3 63:21 64:5,17 84:2 135:13,14 requesting 63:25 requests 10:1 69:14 115:3 required 7:6 21:4 respect 26:25 29:20 43:8,17 48:10 51:12 73:3,17 92:13 98:24 106:9,12 112:13 114:22 127:16 respectfully 39:5 respecting 45:22 | respectively 113:15 respond 122:23 responded 65:1 response 60:13 120:15,19 122:16,25 responsibilities 97:12 103:6,10 responsibility 69:7 102:23 105:2 responsible 14:5 17:21 31:7 45:18 77:19 97:17 101:25 126:20 131:23 132:3,7,13,17 132:22 133:1 133:15 responsive 10:6 rest 44:23 restrictive 47:17 restroom 52:6 93:16 restructured 19:21 retail 86:15 119:17,24 121:25 122:5,9 122:17 123:1,6 reveal 50:11 review 8:4 50:11 54:11 119:21 125:10,17 135:13 reviewed 9:15,19 reviewing 32:24 115:11 revised 17:6 right 12:6 13:21 14:16 25:7 27:15,20 28:18 35:22 45:9,10 47:19 49:3 | 56:14 65:6,7 69:16 75:14 80:24 83:17 88:21 91:24 96:9 102:25 111:23 120:20 122:19,20 123:21,24,25 124:2 127:25 130:11,12 131:10 Roeber 32:9 112:7 role 12:5,18 13:12 29:13 46:8 69:25 70:7 73:3,4,6,17,22 106:12 114:22 115:6,10 117:7 117:10,12 126:18 roles 73:6 roll-up 72:22 131:9 rolled 79:23 131:13 Romey 61:15,18 61:25 62:3 room 75:15 roughly 39:3 routine 20:4,21 20:25 routinely 21:1 row 131:3 RPR 1:23 rude 25:3 Rukavina 2:5 3:3 3:5 6:4 7:4,15 7:17 9:7,10,11 14:15,23,25 16:2,25 18:17 19:14 21:2 22:11,24 24:11 24:18 28:5 30:4 30:10,17,23 |
|--|--|--|---|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|--|---|--|
| 31:12,20 34:10 35:16 36:18 38:10 39:22 41:4,17 42:19 43:6 44:4,7 45:5 46:8 47:22 49:6,17,25 50:10 51:6,17 51:24 52:5,8 53:4,15 55:9,23 56:9,19 57:2,20 58:19 59:11 62:19,23 65:20 69:13 70:19 72:15 73:24 74:8 75:9,13 76:19 78:1,7,11 79:8,10,14 80:8 80:19 82:4,21 82:25 83:8,13 83:15 85:24 86:2 87:9 88:6 88:20 89:5,19 90:3 93:23 94:5 94:14,19 110:17,20 113:8,19 114:8 114:17 118:9 118:21 119:3 121:17 122:12 125:7 128:2 130:13 133:25 134:2 | 125:6 126:12 saying 37:19 41:15 49:23 53:4 73:8 76:14 93:19 99:5 101:9 says 32:1,6 34:10 44:10,13,18 57:8,22,25 60:23 63:2 64:4 78:25 86:23 87:10 89:9 120:2,22 scan 55:13 schedule 76:24 77:5,6,21 80:20 82:7 85:3,13,17 131:20 scheduled 16:4,7 schedules 77:9 85:12 schooling 10:20 Scott 4:3 18:9 60:4,12,15 61:10,13 62:1 Scott's 60:13 scratch 17:3 search 10:5 second 7:15 44:5 62:18 78:23 80:22 99:24 109:15 Secondly 87:16 section 80:9 86:1 118:19 see 6:8 8:5,12,14 23:3 31:5,20 32:25 35:7 54:11 57:9,21 59:7,15,20 60:6 60:20 61:23 63:5,9 64:2,7 78:24 79:14 80:15,18,24 81:3 84:11 85:6 | 86:23 87:1,5 89:8,11 105:9 115:11 120:9 120:22,25 121:4 126:4 seeing 31:4 50:14 57:14 65:23 90:12 seek 46:20 seeking 24:3 seen 33:14 65:22 69:13 72:15 76:21 88:7 122:25 Seery 4:8 5:1 8:8 25:12,20 29:24 59:13 60:18,22 61:12 62:4,6,9 63:1,2 64:4 65:9 67:3,14,17 67:25 68:13,22 69:14 88:11,23 96:25 125:25 126:13 Seery's 8:10,20 send 29:14 32:13 34:24 37:7 53:21 59:7 60:11 62:2 63:17 83:22 sending 13:19 36:3 54:12 60:17 61:2 111:19 senior 12:8,11,11 12:12,17 sense 44:12 58:1 sent 28:22 29:11 37:17 42:9 83:2 83:17 92:16,22 106:20 107:3 111:21 123:19 126:11,13 separate 18:5 served 10:1 | services 15:11,22 70:13,13 86:16 119:17,19 120:7 set 26:10,11,14 35:15 53:21 shape 37:10 shared 54:9,16 55:14 70:13 77:16 86:16 shareholders 39:2 sheet 118:6 121:11 sheets 63:8,22 short 74:22 75:17 75:23 93:15 shorthand 1:24 135:2,7,25 shortly 11:11,12 show 82:10 showing 92:15 131:21 sick 82:17 sign 52:20,20 53:7,20,22 54:3 104:25 105:1 113:5,18 115:13 signatory 52:14 signature 46:15 47:1,6,11,18 49:8,14,15 114:7,9,15 signed 47:9 52:10 52:11,25 55:4,8 115:14 131:6 132:5,9 signer 53:13 significant 20:20 51:19,22 signing 52:16,24 53:25 similar 32:25 34:9 38:25 | 96:10 112:13 single 104:2,3 sitting 30:25 33:24 42:1 50:15 53:23 54:4 55:24 82:4 85:16 91:21 105:16 106:23 situation 34:9 slightly 96:10 SMU 10:23 so-called 15:22 somebody 35:19 37:8 53:12,12 53:19 55:21 129:3 soon 32:17 sophisticated 14:12 sorry 11:12 14:24 19:15 47:8 52:4 57:21 66:2 82:23 92:12 97:3 103:9,23 109:20 sort 25:21 43:23 96:11 97:24 sought 88:24 sound 58:15 sounds 98:3 speak 36:2 speaking 13:17 43:11 44:1 speakings 95:21 specific 7:19 21:18 29:7 34:21 36:4,17 37:1,14 38:2 43:10 46:11,22 47:25 48:11,13 54:14 71:8 88:17 90:19 100:11 101:22 103:11,18 105:21 106:24 |
|---|--|--|---|--|

S

S-e-e-r-y 8:8
Sadly 94:9
salaries 108:17
108:18,19
salary 25:15
sale 68:4,8
save 55:13 72:19
saved 56:11
saw 41:8 86:6
115:12 123:19

Kristin Hendrix - October 27, 2021

| | | | | |
|--|---|--|--|---|
| 127:6 specifically 21:6 21:10 23:11 29:9 34:15 37:8 49:12 50:12,16 50:19 51:2 52:3 52:19 54:1,7 55:8 64:25 65:3 65:4,8 68:25 69:22 77:14 84:19,21 93:5 98:16 103:2,7 125:13,18 specifics 22:4 speculating 58:9 speculation 106:4 sphere 69:6 spit 48:1 spoken 35:23 61:13 spreadsheet 78:9 spreadsheets 31:6 77:12 staff 48:2 stake 27:7 stamp 47:19 82:18 standard 46:16 50:7 53:6,11,15 53:16 55:3 standing 67:2 STANG 2:10 start 54:19 59:11 95:10 100:11 started 11:13,17 20:11 100:10 starting 10:19 11:9 starts 59:12 state 1:23 6:5 10:25 67:25 68:14 76:22 78:16 136:1 stated 48:25 | 135:9 statement 99:3 statements 4:5 13:20 63:7,8,21 63:22 97:16,17 115:12 116:17 116:21 117:1,5 117:11 119:2 122:4 133:18 133:22 STATES 1:1 status 66:20 stay 26:4 steps 92:13 STINSON 2:17 stop 34:24 stopped 23:22 stored 56:2 straightforward 26:14 Strasburger 44:13,16 Street 1:25 2:4 stretch 109:5 strike 7:24 8:4 15:8 38:16 52:22 53:5 68:12 87:9 90:11 string 122:19 stuff 49:15 stupid 86:9 subject 16:5 119:20,20 132:19 subparts 86:20 Subscribed 134:7 subsequent 14:7 59:25 61:12 64:10 95:13 96:22 105:12 116:13 118:3 118:19 subsequently 32:11 | sued 28:21 suggest 124:14 suing 28:5 Suite 2:4,17 136:2 summarize 72:19 summary 7:12 8:14 summer 123:16 124:18 supervision 135:11 supplementally 9:19 supposed 98:20 sure 6:12,15 10:21 11:4,11 12:20 13:20 14:11 18:22 19:23 22:11 26:7 28:16 31:2 33:10,21,22 37:5 42:3,22 43:20 52:25 58:18 60:16 62:1,19 63:17 65:4 66:11 75:21 76:11,11 84:15 99:3 100:7 101:1 107:18 109:22 115:16 125:24 126:23 130:23 130:24 Surgent 29:24 surprise 76:1,3 surprised 94:11 surprises 40:8 76:2 suspect 23:15 switch 58:24 sworn 1:19 6:2 135:4 synopsis 7:12 8:14 | system 56:12 77:16 84:20 <hr/> T <hr/> T-h-e-d-f-o-r-d's 86:22 take 25:14 30:8 38:11 45:5 52:5 52:20 72:15 75:17 76:15 82:12 87:10 89:13 92:13 104:1 110:14 taken 1:20 16:15 17:6 45:8 135:7 talk 7:21,24 8:1 8:17,20,23,25 28:10 34:21 44:9 66:11,15 78:1 talked 9:12 97:4 99:8 talking 8:19,22 29:1 64:11 101:2 116:8 121:15,23 125:13 taxes 14:9 team 13:19 17:25 18:21 26:4 31:6 39:15 49:15,18 50:24 51:7 64:16 97:16 102:4 104:11 106:15 115:2 telephone 23:17 74:11 75:23,25 tell 34:13,16,24 44:2 53:1 54:1 54:2 55:7 60:14 63:24 71:23 74:19,23 79:22 79:24 84:3 91:11,15,18 93:24 99:2 | 100:12 106:14 107:1 109:22 110:8 112:8,25 113:4,17 114:1 114:6,14 116:20,23,24 117:21 118:25 119:6,11 122:4 122:8 123:2,8 123:11 130:22 131:24 132:4,8 132:11,14,18 132:23 133:2 135:4 telling 35:25 37:11 53:24 100:13,21 105:22 115:24 template 18:20 18:24 43:14,18 45:8 46:17 58:4 58:6,12 templates 43:12 50:9 term 17:2 66:9 66:16 67:8,13 73:10 76:24 77:10 98:17,25 100:4 107:20 107:24 125:19 126:2 127:12 127:16,24 128:8,21 130:7 131:5,8,14 terminology 27:14 TerreStar 38:22 test 20:9 testified 6:2 45:7 72:18 112:12 113:13 127:22 129:22 testify 83:10,12 testifying 6:16 testimony 19:8 |
|--|---|--|--|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|---|--|---|---|
| 20:1,15 26:23 41:2 51:11 56:10 99:9 135:9 Texas 1:2,23,25 10:15,22,25 11:13 134:8 136:1 thank 79:13 94:2 94:11,15 111:4 128:3 134:2 Thedford 4:22 120:2 122:22 Thedford's 86:21 120:15 123:5 thereto 135:21 thing 20:20 30:18 34:4 56:22 58:3 94:20 126:21 things 12:21 18:24 19:2,9 37:21,24 74:18 87:13 100:10 think 20:6 22:11 22:24 24:1,18 24:21 25:13 32:2 33:9 41:4 41:25 42:3 44:13,25 45:1 45:19,19,21,21 46:2 49:16 50:8 51:6 58:3 59:2 61:8,16 64:21 66:1 69:2 72:18 75:22 79:19 80:8 87:12 88:9 88:23 102:22 104:12 109:7 127:22 129:23 Third 2:10 thought 75:22 130:25 three 87:15 125:19 127:24 128:7,8,21 | 130:7 131:5 Tim 109:20,23 time 9:1,6 11:17 14:19,19 17:12 20:10 22:5,5,12 22:12 23:12 31:5 32:9 33:8 35:6 44:15 45:19 49:14 51:10,18 55:1 64:2 65:10 66:16,19 67:11 69:7,11,24 70:6 72:19 73:16 75:6 77:24 78:4 80:10,10 81:19 82:12 84:4 86:14 90:11 93:8,24 103:16 104:2 108:6,16 108:21,22 109:1 112:25 113:1,4,5,17 114:1,14 116:20,25 123:4,8,11 125:14 128:12 130:20 131:25 132:4,8,11,14 132:18,23 133:2 135:8 timely 128:24 129:6 times 9:12 29:2 51:4 109:4 title 12:13,14 13:2 46:11 69:25 70:7 today 8:23 11:23 13:10 25:6 28:2 30:25 32:16 33:24 41:19,23 42:1 50:15 53:23 54:4 55:24 65:5,8,23 | 82:4 83:2 85:16 90:13 91:21 94:12 95:1,22 105:16 106:23 121:23 today's 9:14 told 34:12 35:15 35:19,22 36:19 36:24 37:5,8 38:5,11,17 40:22 41:11,18 41:20 60:8 91:9 91:22 103:2,7 104:10,18 106:21,25 top 80:25 topic 88:19 92:5 95:8 96:11 109:7 130:19 topics 98:12 107:18 total 78:14,18 79:22 80:22 track 29:1 tracking 31:6 111:19 training 16:13 transaction 112:10,14,22 transactions 37:4 119:7 transcript 7:9 135:13 transfer 40:14 81:15 91:3,7,9 91:13,22 92:20 92:20 111:14 transferred 38:18 39:23 90:23 111:10 transferring 81:22 transfers 35:8 37:12 38:5 40:24 | treasury 12:20 13:14,15 14:1 15:22 17:17 trigger 107:21 108:5 triggers 26:11 trouble 42:10 43:1 true 42:25 134:7 trusted 50:8 truth 135:5,5,5 try 10:5 20:10 95:2,3 105:8 trying 21:18 23:20 84:5 turning 19:22 two 24:4 27:25 29:18 30:1 31:1 37:18 38:4,21 42:7 43:8 46:22 52:16 53:25 54:5 57:7,14 70:13 73:16 86:20 106:9 109:14,18,24 110:6 113:12 116:7,11,25 117:17 118:7 121:15,22 122:10 123:13 124:6 TX 2:4,18 136:2 typewriting 135:10 typical 18:18,23 23:25 typically 21:10 35:1,5,6,12 47:7 52:19 54:2 101:1 typo 87:12 <hr/> U <hr/> Uh-huh 27:16 33:12 47:3 | umbrella 13:25 99:23 unable 108:17 109:2 underlying 131:20 understand 6:16 6:20,21,24 10:9 15:3 26:7 27:10 33:22 39:14 41:22 56:16 58:8 84:14 95:5 119:16,23 122:21 125:8 125:15 128:5 understanding 13:3,5 25:1 27:5,25 43:24 44:20 50:22 57:23 62:5 63:20 70:21,25 71:3 78:22 79:17,25 81:6 89:20 98:23 115:9,22 126:5 128:19 131:16 133:14 understood 7:1 39:11 unfortunately 42:4 unilaterally 110:22 UNITED 1:1 University 10:21 unpaid 80:9 upcoming 67:16 72:6 73:3 74:1 126:1 update 43:11 45:1 58:7 77:20 updated 43:18 updating 17:23 18:23 19:1,3,25 50:8 |
|---|---|--|---|---|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|--|---|--|
| use 21:17 45:12 47:19 48:12 49:18 59:1 79:1 100:4 usually 24:5 <hr/> V <hr/> Vaguely 63:12 valid 131:25 valuation 39:15 various 14:15 15:11 59:13 verbatim 27:14 78:25 85:20 86:22 verification 50:3 version 30:13 42:7 versions 30:24 video 8:5,12 59:6 62:16 85:24 videoconference 1:19 2:19 view 41:9 volume 94:19 vs 1:8 <hr/> W <hr/> wait 44:23 walk 10:18 11:8 walking 54:7 want 28:10 47:15 58:25 86:18 95:8 100:7 wanted 52:19 54:2,9 60:12,14 82:17 84:7 102:11 105:9 wanting 65:10 wasn't 108:23 114:6,15 127:7 129:14 Waterhouse 4:21 7:10,21 13:7,8 23:13,22,23 | 24:6 29:23 34:19 35:24 36:2 37:3,5,9 38:5 47:24 49:7 50:12,16 52:10 52:23 53:24 54:5,13 60:11 62:10 63:1,18 64:3 67:3 71:5 72:1 73:8 74:13 75:20 83:19 84:1 90:4,7,16 91:10,22 93:9 99:5,18 102:16 103:8,12,19 106:14 112:6,8 112:21,25 113:4,17,22,25 114:5,6,13 115:6 116:19 116:23 117:20 118:24 122:3,7 122:22 124:8 124:10,13,16 124:24 125:25 126:6,24 127:3 127:9,19 128:9 128:14,18,19 129:23 130:4 130:11 Waterhouse's 8:1,6 47:1,6 48:11 75:25 115:10 way 11:18 12:23 14:8 21:15 35:13,15 37:8 37:10,16 56:12 58:20 60:19 76:1 81:12 83:3 92:25 93:10 101:21 122:5 135:19 ways 6:7 54:19 we'll 9:10 15:9 | 17:5 44:8,23 66:11,15 75:17 82:18 94:3 we're 6:7 27:22 28:16 29:1 30:6 35:19 50:22 58:9,24 59:2,3 76:11,11 85:20 93:22 100:7 104:3 116:8 125:13 we've 9:11 28:8 50:7 56:21,22 69:16 88:9 114:2 117:18 121:23 website 49:3 week 8:2,10 9:2 9:22,25 10:5 13:22 28:9,17 29:18 60:22 61:6 67:6 86:1 95:19 weekly 66:21,25 67:2 welcome 59:1 86:17 went 9:15 10:22 10:23 24:19,22 49:23 112:17 115:4 weren't 19:25 28:23 40:7,9 64:12 96:7 98:21,24 99:20 100:24 101:13 105:22 106:3 131:1 wire 34:25 106:15 107:3 withdrawn 113:23 117:25 120:3 124:9,21 126:6,7 127:7,9 129:15 132:12 | 133:9 withholding 116:3 within-entitled 135:6 witness 1:19 16:1 16:24 18:16 19:13 20:25 22:10,23 24:10 24:17 30:3 31:11 34:8 35:12 36:15 38:9 39:19 41:3 41:15 46:6 48:24 49:12,22 50:6 51:5,16,22 52:3 53:11 55:7 55:21 56:6 57:18 58:18 69:10 70:17 73:22 74:7 75:12 77:24 80:5,18 82:3 83:10,12 88:17 89:4,17 94:14 96:20 102:4 103:15 105:21 106:7,20 113:21 114:12 114:18 118:11 119:4 121:18 122:14 135:3 135:10 word 42:6,6 43:7 43:8 45:11 47:2 77:13 words 21:5 23:20 68:14 work 11:8 52:4 98:2 126:22 worked 11:16,18 36:6 61:19 110:5 works 35:1 world 113:25 | 114:5,14 116:24 117:21 118:24 119:6 119:11 122:3,8 124:17 wouldn't 36:22 37:6 53:22 wrap-up 110:16 write 60:4 writes 60:18,22 61:13,20 writing 37:10 41:14 64:3 114:25 117:14 written 80:7 82:19 91:25 99:7 104:12,15 wrong 57:5 87:13 99:7 wrongly 123:12 www.dickman... 136:4 <hr/> X <hr/> Y <hr/> yeah 7:2 14:13 21:10 34:9 44:23 51:9 80:18 93:17 year 12:2 20:10 26:14 78:1,5 81:6 104:5 127:15 128:21 128:25 129:7 129:14 130:8 131:21 years 11:15,18 12:9 18:20 21:9 22:25 23:9 36:7 37:18 40:25 51:7 52:4 104:21,22 108:15 109:17 110:8,10,12 |
|---|--|--|---|--|

Kristin Hendrix - October 27, 2021

| | | | | |
|---|--|---|---|---|
| 131:3 133:5,12 Yep 76:9 123:17 yesterday 9:2 86:7,9 York 2:11 | 12.3 120:24 121:13 123:5,9 12/30/29 78:25 13 4:14 72:11,13 72:16 13-week 67:5 125:7,10,14,23 126:16,19 128:17 130:3,6 14 4:17 22:25 23:9 36:7 40:25 76:10,17,19 82:6 85:17 90:22 91:4 93:8 | 2.4 30:20 32:13 32:21 33:19 37:12 38:22 39:7 42:16 43:3 58:5,11 111:10 113:14 2.4- 110:22 2.4M 3:12,19,23 2000 86:22 2001 127:23 2004 10:21 11:12 2005 11:11 20:16 21:2,9,19 2009 10:23 2014 133:12 2015 10:24 2017 12:15 19:23 73:2 74:7 131:6 131:12 2018 116:4,16 117:1,11,23 118:3,11,14,18 119:1 128:25 2019 3:14 12:10 12:17,19,25 13:8,14 17:9,12 17:20 18:2,8,10 18:10 19:15 20:2,2 21:2,9 21:19 23:16,16 24:12,14 30:20 31:17 34:14 37:11 38:17,21 39:6,14 40:3,5 41:11,18 44:25 45:14 46:9,12 46:19 47:12,24 48:21 49:6,19 50:2 53:5,6 54:21 55:3,10 56:9,20 57:22 74:7 78:5 80:23 81:6,18 110:21 111:1 112:9,21 114:1 116:5 | 117:18 118:16 129:8 2020 4:4,11,22 12:7 14:2,5 15:6,10,21 16:3 24:22 59:12 62:6,10 65:14 66:3,7,18,19 67:13,17,20 68:1,8,14,21 70:23 71:4 74:8 75:19 76:4 78:2 79:10 83:18 86:25 87:6 88:12 93:21 98:21,25 100:25 101:11 101:19 102:7,8 102:20 103:21 105:4,18 120:23 122:17 122:19 124:18 125:14,20 126:9 127:6 128:20 129:14 129:17 2021 1:15,21 4:8 5:2,6 24:24 26:4 28:20 29:11 62:25 64:15 71:25 73:3 88:2 90:5 90:17 94:10 106:10,25 128:2,8,15 134:9 135:22 21-03004-sgj 1:8 214 136:3 23 85:1 87:3 23,846,000 84:9 24,471,000 89:9 25 61:6 26 10:17 27 1:15,21 28 125:20 | 29 83:18 84:1 2nd 58:5 111:9 <hr/> 3 3 3:10,14,17,21 4:11 31:15,18 34:4,11 35:21 36:20 37:11,19 38:12 41:11,18 44:18 56:20 65:14 66:3 111:7 112:21 119:7 30 3:10,12 71:4 72:4 74:10 86:25 87:6 93:21 120:23 129:24 30-year 19:22 30,746,812.33 4:14 30.7 66:9,13 30.7M 4:17 31 3:14 4:15 67:16 70:22 79:10 88:12 98:21,25 100:25 101:11 101:19 102:8 102:19 103:20 105:3,18 131:6 3102 2:17 312 136:1 34th 2:11 3800 2:4 38th 1:25 <hr/> 4 4 3:17 42:15,17 42:19 43:6,18 43:18 44:21,24 45:22,25 46:3 46:19 48:11,19 50:13,17 51:2 52:8 55:17,24 |
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Kristin Hendrix - October 27, 2021

| | | | | |
|--------------------------|--------------------------|--|--|--|
| 57:16 | 7 | | | |
| 42 3:17,19 | 7 3:23 5:2 43:2,4 | | | |
| 4228 136:2 | 44:9,19 88:2,21 | | | |
| 43 3:21,23 | 7.4 38:18 39:11 | | | |
| 445-9548 136:3 | 39:23 40:15,21 | | | |
| | 122:10 123:12 | | | |
| 5 | 72 4:14 | | | |
| 5 3:19 30:12 33:1 | 75201 2:4 | | | |
| 33:20,25 34:5 | 75206 136:2 | | | |
| 35:3 36:25 | 75219 2:18 | | | |
| 37:12 38:25 | 76 4:17 | | | |
| 39:3,8 42:15,16 | 777 2:17 | | | |
| 42:17,20 43:2,6 | 780 2:10 | | | |
| 43:18,19 44:21 | | | | |
| 44:24 45:22,25 | 8 | | | |
| 46:3,19 48:11 | 8 3:25 56:19,24 | | | |
| 48:19 50:13,18 | 56:25 58:10 | | | |
| 51:2 52:9 55:17 | 89:9 | | | |
| 55:24 57:16 | 800 136:3 | | | |
| 58:13,13 94:9 | 83 4:19 | | | |
| 112:14 113:14 | 85 4:21 | | | |
| 5- 33:19 | 855-5100 136:3 | | | |
| 5.0 110:23 | 88 5:1 | | | |
| 5/31/2020 79:5 | 881 120:1 | | | |
| 500 1:24 2:3 | | | | |
| 530,000 78:25 | 9 | | | |
| 56 3:25 4:1 | 9 4:1 56:21,24,25 | | | |
| 575- 79:23 | 58:10 | | | |
| 575,000 79:12 | 90 5:5 | | | |
| 575,550 79:6 | 94 3:4 | | | |
| 59 4:3 | 99 49:14 | | | |
| 5M 3:10,17,21 | | | | |
| 6 | | | | |
| 6 3:3,21 4:8,22 | | | | |
| 43:2,4,21 44:9 | | | | |
| 44:18 62:25 | | | | |
| 64:15 80:12 | | | | |
| 86:22 | | | | |
| 6/30 86:23 121:3 | | | | |
| 121:6,11,25 | | | | |
| 122:8 | | | | |
| 62 4:7 | | | | |
| 65 4:11 | | | | |
| 683 87:3 | | | | |

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "**applicable federal rate**" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

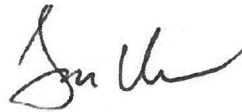
6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "**applicable federal rate**" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

From: David Klos <DKlos@HighlandCapital.com>
To: Corporate Accounting <CorporateAccounting@hcmlp.com>
Subject: HCMLP to HCMFA loan
Date: Thu, 2 May 2019 11:23:45 -0500
Importance: Normal
Inline-Images: image001.jpg

Blair,

Please send \$2,400,000 from HCMLP to HCMFA. This is a new interco loan. Kristin, can you or Hayley please prep a note for execution. I'll have further instructions later today, but please process this payment as soon as possible.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201

C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147

dklos@highlandcapital.com | www.highlandcapital.com



HCMFA APP 0610

CONFIDENTIAL

D-HCMFA030908

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "**applicable federal rate**" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

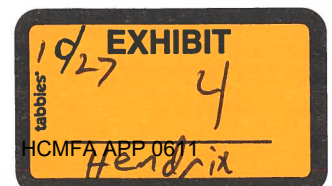
2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

A handwritten signature in black ink, appearing to read "Frank Waterhouse", is written over a horizontal line.

FRANK WATERHOUSE

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

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2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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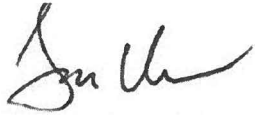
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7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

A handwritten signature in black ink, appearing to read "Frank Waterhouse", is written over a horizontal line.

FRANK WATERHOUSE

| RELATED DOCUMENTS | |
|----------------------------|---------------------------|
| No family members | |
| Not part of a conversation | |
| Similar (36) | |
| METADATA | |
| Doc ID | 90589 |
| Pages | 2 |
| Custodian | Hcmf |
| Bates No. | - |
| Revealed | Ⓢ |
| Unrevealed | Ⓢ |
| Tags | 20211025 Client Files |
| Filenames | HCMF loan 05.03.2019.doc |
| Author | JFORSHEE |
| Company | Strasburger |
| Title | PROMISSORY NOTE |
| Created | 5/3/2019 2:03 PM CDT |
| Modified | 5/3/2019 2:03 PM CDT |
| Accessed | 5/3/2019 2:03 PM CDT |
| Printed | 5/2/2019 11:27 AM CDT |
| Path | /HCMF loan 05.03.2019.doc |

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP, ("Maker") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("Payee"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the "Note"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "*applicable federal rate*" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.
2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.
3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.
4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind



PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("Maker") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("Payee"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the "Note"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "*applicable federal rate*" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.
2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.
3. Prepayment Allowed: Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.
4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind

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| Pages | 2 |
| Custodian | Hcmf |
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| Revealed | ④ |
| Unrevealed | ④ |
| Tags | 20211025 Client Files |
| Filenames | HCMF loan 05.02.2019.doc |
| Author | JFORSHEE |
| Company | Strasburger |
| Title | PROMISSORY NOTE |
| Created | 5/2/2019 11:26 AM CDT |
| Modified | 5/2/2019 11:31 AM CDT |
| Accessed | 5/2/2019 11:31 AM CDT |
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| Size | 61.5KB |
| Pages | 2 |
| Words | 618 |
| Total Editing Time | 0 Minutes |
| Title | PROMISSORY NOTE |
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| Template | Normal.dotm |
| Status | Add text |
| Categories | Add a category |
| Subject | Specify the subject |
| Hyperlink Base | Add text |
| Company | Strasburger |

Related Dates

| | |
|---------------|-------------------|
| Last Modified | 5/3/2019 2:03 PM |
| Created | 5/3/2019 2:03 PM |
| Last Printed | 5/2/2019 11:27 AM |

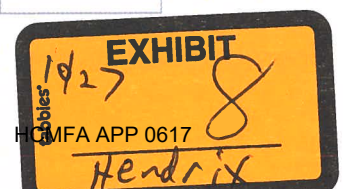
Related People

| | |
|------------------|---------------------|
| Manager | Specify the manager |
| Author | JFORSHEE |
| | Add an author |
| Last Modified By | Kristin Hendrix |

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HCMF loan 05.02.2019

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| Words | 621 |
| Total Editing Time | 5 Minutes |
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| Comments | Add comments |
| Template | Normal.dotm |
| Status | Add text |
| Categories | Add a category |
| Subject | Specify the subject |
| Hyperlink Base | Add text |
| Company | Strasburger |

Related Dates

| | |
|---------------|-------------------|
| Last Modified | 5/2/2019 11:31 AM |
| Created | 5/2/2019 11:26 AM |
| Last Printed | 5/2/2019 11:27 AM |

Related People

| | |
|---------|---------------------|
| Manager | Specify the manager |
| Author | JFORSHEE |

Add an author

 Kristin Hendrix

Last Modified By

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From: Scott Ellington <SEllington@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Subject: Re: HCM - HCMFA Financial Statements
Date: Wed, 2 Dec 2020 17:51:57 -0600
Importance: Normal

Yes please do.

Sent from my iPhone

On Dec 2, 2020, at 4:30 PM, Kristin Hendrix wrote:

Scott, can you confirm this is okay to proceed with providing?

Begin forwarded message:

From: James Seery
Date: December 2, 2020 at 4:27:43 PM CST
To: Kristin Hendrix
Cc: Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington , Greg Demo , Thomas Surgent
Subject: Re: HCM - HCMFA Financial Statements

All:

Scott and I have spoken and agree that the information should be provided to James immediately.

Kristen, please proceed with James. If anyone has any questions or issues, please call me.

Thanks

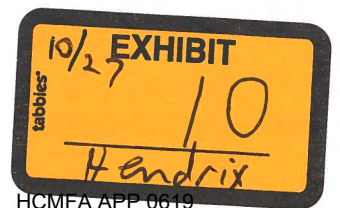
Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery
Date: Wednesday, December 2, 2020 at 11:50 AM
To: Kristin Hendrix



ACL-072954

Cc: Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington , Greg Demo

Subject: Re: HCM - HCMFA Financial Statements

This is an explicit direction from me as CEO of HCMLP to provide the requested information regarding HCFMA to James Romey.

If anyone has issued contrary direction at any time, that direction is superseded and void.

Please provide the information now.

Scott, please call me.

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery

Date: Wednesday, November 25, 2020 at 1:48 PM

To: Kristin Hendrix

Cc: Jack Donohue , Bradley Sharp , Fred Caruso , James Romey , Frank Waterhouse , Scott Ellington

Subject: Re: HCM - HCMFA Financial Statements

Can I get this ASAP.

HCFMA is way overdue.

Thank.

Sent from my iPhone

On Nov 25, 2020, at 10:56 AM, Kristin Hendrix wrote:

Hi Jack,

Scott Ellington is going to follow up with the board on this request.

Thanks,

Kristin

From: Jack Donohue

Sent: Thursday, November 19, 2020 11:38 AM

To: Kristin Hendrix

Cc: Jim Seery ; Bradley Sharp ; Fred Caruso ; James Romey

Subject: HCM - HCMFA Financial Statements

Kristin,

Jim Seery has asked me to review the financial records of HCMFA due to the funds owed the Debtor. Can you please send me the balance sheet, P&L and cash flow for 2019 and through 2020?

Thanks,

Jack

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

Phone: (312) 263-4141| **Fax:** (312) 263-1180

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From: "John A. Morris" <jmorris@pszjlaw.com>

To: 'James Seery' <jpseeryjr@gmail.com>, Frank Waterhouse
<FWaterhouse@HighlandCapital.com>

Cc: Thomas Surgent <TSurgent@HighlandCapital.com>

Subject: RE: HCM - Information Request

Date: Wed, 6 Jan 2021 22:38:31 +0000

Inline-Images: image001.jpg

Confirmed.

John A. Morris

Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

jmorris@pszjlaw.com

[vCard](#) | [Bio](#) | [LinkedIn](#)



Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

From: James Seery [mailto:jpseeryjr@gmail.com]

Sent: Wednesday, January 06, 2021 5:37 PM

To: Frank Waterhouse

Cc: John A. Morris; Thomas Surgent

Subject: Re: HCM - Information Request

Adding Thomas

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery

Date: Wednesday, January 6, 2021 at 5:35 PM

To: Frank Waterhouse

Cc: John Morris

Subject: Re: HCM - Information Request

Frank:

I am the CEO of HCMLP and your direct supervisor. I have full authority over the Debtor's assets and operations. Indeed my appointment and authority has been court ordered by a court with full jurisdiction



over the Debtor and its assets.

I am entitled to all information on the HCMLP owned and maintained financial and information systems from wherever it came as well as any other information in the possession of the Debtor. To the extent that the Debtor has information pursuant to a shared service agreement, any other agreement, or any other part of its business (pre or post-petition), I am entitled to it, and you are required as CFO to provide to me or deliver it as I request.

For this one time, I am providing you the courtesy of a detailed response. I will even ask counsel to confirm my authority to give this direction. No third party consents are required by you or the Debtor.

I trust this letter allays your concerns.

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Frank Waterhouse

Date: Wednesday, January 6, 2021 at 5:22 PM

To: Jim Seery

Subject: RE: HCM - Information Request

Jim-

I wanted to follow up on our conversation in which you requested that I provide you with certain financial information relating to the entities below. In the first instance, I don't have access to any information relating to Dugaboy. As you know, I have access to this information because, other than Dugaboy, the Debtor continues to provide shared services. I expressed reservation about whether, pursuant to the Shared Services Agreement and my confidentiality obligations, I was permitted to provide the CEO of the Debtor with this financial information, as only a few of the shared services employees are permitted access to the financial information of the former affiliates of the Debtor. You responded by saying that I would be terminated today if I didn't comply.

I'm not a lawyer, and I want to do the right thing in terms of my obligations to these third parties, which is why I asked you if I was permitted to provide the information under a court order or something.

In thinking about it and your statement that I would be terminated, if Debtor's counsel gives me authority to provide this information and approves that it is legal without me obtaining consent of the Trustees or the appropriate representatives of the non-trusts, then I will provide the access.

I will be available to discuss at 4:30 as per your request.

Thanks

Frank

From: James Seery

Sent: Wednesday, January 6, 2021 3:31 PM

To: Frank Waterhouse
Subject: FW: HCM - Information Request

Frank.

As discussed, after consulting with your personal counsel, please speak to me at 4:30pm Dallas time. I will send you and outlook.

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Jim Seery <jpseeryjr@gmail.com>
Date: Wednesday, January 6, 2021 at 3:55 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>, Jack Donohue <JDonohue@DSIConsulting.com>, Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: David Klos <DKlos@HighlandCapital.com>, Bradley Sharp <bsharp@DSIConsulting.com>, Fred Caruso <fcarus@DSIConsulting.com>, James Romey <jromey@DSIConsulting.com>, "Patrick J. O'Malley" <POMalley@DSIConsulting.com>, Thomas Surgent <TSurgent@HighlandCapital.com>
Subject: Re: HCM - Information Request

My direction.

These are HCMLP business records. Please provided them as requested by Jack ASAP.

Thanks

Best. Jim

Jim Seery

631-804-2049

jpseeryjr@gmail.com

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Date: Wednesday, January 6, 2021 at 3:48 PM
To: Jack Donohue <JDonohue@DSIConsulting.com>, Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: David Klos <DKlos@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Bradley Sharp <bsharp@DSIConsulting.com>, Fred Caruso <fcarus@DSIConsulting.com>, James Romey <jromey@DSIConsulting.com>, "Patrick J. O'Malley" <POMalley@DSIConsulting.com>
Subject: RE: HCM - Information Request

Jack-

I'm assuming you've received approval from these entities to release this information? Please send the approval over to us so we can review. If you haven't done so already, let us know and we will do our best to find out who exactly is representing these entities and can coordinate from there.

Thanks

Frank

From: Jack Donohue <JDonohue@DSIConsulting.com>
Sent: Wednesday, January 6, 2021 2:18 PM
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Jim Seery <jpsseeryjr@gmail.com>; Bradley Sharp <bsharp@DSIConsulting.com>; Fred Caruso <fcaruso@DSIConsulting.com>; James Romey <jromey@DSIConsulting.com>; Patrick J. O'Malley <POMalley@DSIConsulting.com>
Subject: HCM - Information Request

Kristin,

At the direction of Jim Seery, please provide DSI with the requested information for each entity below immediately.

Entity:

- Hunter Mountain Investment Trust
- NexPoint Advisors, LP
- Dugaboy Investment Trust
- Highland Capital Mgmt Services, Inc.
- NexPoint Real Estate Partners (f/k/a HCRE Partners, LLC)
- Highland Capital Mgmt Fund Advisors, LP
- NexPoint Real Estate Partners (f/k/a HCRE Partners, LLC)
- Highland Capital Mgmt Services, Inc.

Information:

- 2015 – 2020 bank statements (monthly)
- 2015 – 2020 detailed income statements (monthly or broken out by month)
- 2015 – 2020 detailed balance sheets (monthly or broken out by month)
- 2015 – 2020 cash flows (monthly or broken out by month)

Let know if DSI can assist in gathering the data faster.

Thanks,

Jack

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

Phone: (312) 263-4141| **Fax:** (312) 263-1180

<http://DSIconsulting.com/>

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HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

Highland Capital Management Fund Advisors, LP
 c/o Highland Capital Management, L.P.
 300 Crescent Court, Suite 700
 Dallas, Texas 75201
 Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,¹ in favor of Highland Capital Management, L.P. ("Payee"):

| Date Issued | Original Principal Amount | Outstanding Principal Amount (12/11/20) | Accrued But Unpaid Interest (12/11/20) | Total Amount Outstanding (12/11/20) |
|---------------|---------------------------|---|--|-------------------------------------|
| 5/2/2019 | \$2,400,000 | \$2,457,517.15 | \$35,884.46 | \$2,493,401.61 |
| 5/3/2019 | \$5,000,000 | \$5,119,827.40 | \$74,424.05 | \$5,194,251.45 |
| TOTALS | \$7,400,000 | \$7,577,344.55 | \$110,308.52 | \$7,687,653.07 |

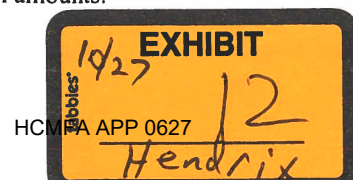
As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

¹ Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.



expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #: 322070381
Bank Name: East West Bank
Account Name: Highland Capital Management, LP
Account #: 5500014686

PROMISSORY NOTE

\$30,746,812.33

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS (\$30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same



shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By: 

Name:

Title:

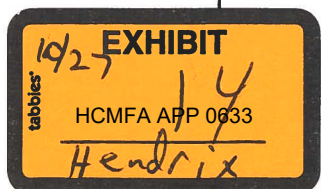
EXHIBIT A**PRIOR NOTES**

| Loan Date | Initial Note Amount | Interest Rate | Principal and Interest Outstanding as of May 31, 2017 |
|------------------|----------------------------|----------------------|--|
| 8/21/14 | \$4,000,000 | 6.00% | \$4,616,739.73 |
| 10/1/14 | \$6,000,000 | 6.00% | \$6,959,671.23 |
| 11/14/14 | \$2,500,000 | 6.00% | \$2,881,780.82 |
| 1/29/15 | \$3,100,000 | 6.00% | \$3,534,679.45 |
| 7/22/15 | \$12,075,000 | 6.00% | \$12,753,941.10 |
| | \$27,675,000 | | \$30,746,812.33 |

NPA \$30.7M

Closing Date 5/31/2017
 Total Commitment \$ 30,746,812
 Rate 6.000%
 Maturity: 12/31/2047

| Date | Interest Accrual | Interest Paid | Accrued Interest | Beg Prin Bal | Principal Paid | Ending Prin Bal | Total Paid |
|------------|------------------|---------------|------------------|---------------|----------------|-----------------|----------------|
| 5/31/2017 | | | | | | \$ 30,746,812 | |
| 6/30/2017 | 151,628.12 | | 151,628.12 | 30,746,812.33 | | 30,746,812.33 | |
| 7/31/2017 | 156,682.39 | | 308,310.50 | 30,746,812.33 | | 30,746,812.33 | |
| 8/31/2017 | 156,682.39 | | 464,992.89 | 30,746,812.33 | | 30,746,812.33 | |
| 9/30/2017 | 151,628.12 | | 616,621.00 | 30,746,812.33 | | 30,746,812.33 | |
| 10/20/2017 | 101,085.41 | (717,706.41) | - | 30,746,812.33 | (82,293.59) | 30,664,518.74 | (800,000.00) |
| 10/31/2017 | 55,448.17 | | 55,448.17 | 30,664,518.74 | | 30,664,518.74 | |
| 11/30/2017 | 151,222.28 | | 206,670.46 | 30,664,518.74 | | 30,664,518.74 | |
| 12/5/2017 | 25,203.71 | (358,904.83) | (127,030.67) | 30,664,518.74 | (942,600.16) | 29,721,918.58 | (1,301,504.99) |
| 12/31/2017 | 127,030.67 | | (0.00) | 29,721,918.58 | | 29,721,918.58 | |
| 1/31/2018 | 151,459.64 | | 151,459.64 | 29,721,918.58 | | 29,721,918.58 | |
| 2/28/2018 | 136,802.26 | | 288,261.90 | 29,721,918.58 | | 29,721,918.58 | |
| 3/31/2018 | 151,459.64 | | 439,721.54 | 29,721,918.58 | | 29,721,918.58 | |
| 4/10/2018 | 48,857.95 | (439,721.54) | 48,857.95 | 29,721,918.58 | | 29,721,918.58 | (439,721.54) |
| 4/30/2018 | 97,715.90 | | 146,573.85 | 29,721,918.58 | | 29,721,918.58 | |
| 5/1/2018 | 4,885.79 | (146,573.85) | 4,885.79 | 29,721,918.58 | | 29,721,918.58 | (146,573.85) |
| 5/9/2018 | 39,086.36 | (879,927.65) | (835,955.50) | 29,721,918.58 | | 29,721,918.58 | (879,927.65) |
| 5/31/2018 | 107,487.49 | | (728,468.01) | 29,721,918.58 | | 29,721,918.58 | |
| 6/30/2018 | 146,573.85 | | (581,894.17) | 29,721,918.58 | | 29,721,918.58 | |
| 7/31/2018 | 151,459.64 | | (430,434.53) | 29,721,918.58 | | 29,721,918.58 | |
| 8/31/2018 | 151,459.64 | | (278,974.89) | 29,721,918.58 | | 29,721,918.58 | |
| 9/5/2018 | 24,428.97 | | (254,545.91) | 29,721,918.58 | (280,765.40) | 29,441,153.18 | (280,765.40) |
| 9/21/2018 | 77,434.27 | | (177,111.65) | 29,441,153.18 | (1,023,750.00) | 28,417,403.18 | (1,023,750.00) |
| 9/30/2018 | 42,042.19 | | (135,069.46) | 28,417,403.18 | | 28,417,403.18 | |
| 10/31/2018 | 144,811.97 | | 9,742.51 | 28,417,403.18 | | 28,417,403.18 | |
| 11/30/2018 | 140,140.62 | | 149,883.13 | 28,417,403.18 | | 28,417,403.18 | |
| 12/18/2018 | 84,084.37 | (294,695.10) | (60,727.60) | 28,417,403.18 | | 28,417,403.18 | (294,695.10) |
| 12/31/2018 | 60,727.60 | | (0.00) | 28,417,403.18 | | 28,417,403.18 | |



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|------------|------------|--------------|------------|---------------|----------------|---------------|----------------|
| 1/31/2019 | 144,811.97 | | 144,811.97 | 28,417,403.18 | | 28,417,403.18 | |
| 2/28/2019 | 130,797.91 | | 275,609.88 | 28,417,403.18 | | 28,417,403.18 | |
| 3/29/2019 | 135,469.26 | (411,079.15) | (0.00) | 28,417,403.18 | (338,920.85) | 28,078,482.33 | (750,000.00) |
| 3/31/2019 | 9,231.28 | | 9,231.28 | 28,078,482.33 | | 28,078,482.33 | |
| 4/16/2019 | 73,850.25 | (83,081.53) | 0.00 | 28,078,482.33 | (1,216,918.47) | 26,861,563.86 | (1,300,000.00) |
| 4/30/2019 | 61,818.39 | | 61,818.40 | 26,861,563.86 | | 26,861,563.86 | |
| 5/31/2019 | 136,883.59 | (198,701.98) | 0.00 | 26,861,563.86 | 198,701.98 | 27,060,265.84 | |
| 6/4/2019 | 17,793.05 | (17,793.05) | 0.00 | 27,060,265.84 | (282,206.95) | 26,778,058.89 | (300,000.00) |
| 6/19/2019 | 66,028.09 | (66,028.10) | (0.00) | 26,778,058.89 | (2,033,971.90) | 24,744,086.99 | (2,100,000.00) |
| 6/30/2019 | 44,742.73 | | 44,742.73 | 24,744,086.99 | | 24,744,086.99 | |
| 7/9/2019 | 36,607.69 | (81,350.42) | (0.00) | 24,744,086.99 | (548,649.58) | 24,195,437.41 | (630,000.00) |
| 7/31/2019 | 87,501.31 | | 87,501.31 | 24,195,437.41 | | 24,195,437.41 | |
| 8/13/2019 | 51,705.32 | (139,206.62) | 0.00 | 24,195,437.41 | (1,160,793.38) | 23,034,644.03 | (1,300,000.00) |
| 8/31/2019 | 68,157.30 | | 68,157.31 | 23,034,644.03 | | 23,034,644.03 | |
| 9/30/2019 | 113,595.50 | | 181,752.81 | 23,034,644.03 | | 23,034,644.03 | |
| 10/15/2019 | 56,797.75 | | 238,550.56 | 23,034,644.03 | | 23,034,644.03 | |
| 10/31/2019 | 60,584.27 | | 299,134.83 | 23,034,644.03 | | 23,034,644.03 | |
| 11/30/2019 | 113,595.50 | | 412,730.34 | 23,034,644.03 | | 23,034,644.03 | |
| 12/30/2019 | 113,595.50 | -530,112.36 | (3,786.52) | 23,034,644.03 | | 23,034,644.03 | (530,112.36) |
| 12/31/2019 | 3,786.52 | | 0.00 | 23,034,644.03 | | 23,034,644.03 | |
| 1/31/2020 | 117,382.02 | | 117,382.02 | 23,034,644.03 | | 23,034,644.03 | |
| 2/29/2020 | 109,808.99 | | 227,191.01 | 23,034,644.03 | | 23,034,644.03 | |
| 3/31/2020 | 117,382.02 | | 344,573.03 | 23,034,644.03 | | 23,034,644.03 | |
| 4/30/2020 | 113,595.50 | | 458,168.54 | 23,034,644.03 | | 23,034,644.03 | |
| 5/31/2020 | 117,382.02 | (575,550.56) | (0.00) | 23,034,644.03 | 575,550.56 | 23,610,194.59 | |
| 6/30/2020 | 116,433.84 | | 116,433.83 | 23,610,194.59 | | 23,610,194.59 | |
| 7/31/2020 | 120,314.96 | | 236,748.80 | 23,610,194.59 | | 23,610,194.59 | |
| 8/31/2020 | 120,314.96 | | 357,063.76 | 23,610,194.59 | | 23,610,194.59 | |
| 9/30/2020 | 116,433.84 | | 473,497.60 | 23,610,194.59 | | 23,610,194.59 | |
| 10/31/2020 | 120,314.96 | | 593,812.56 | 23,610,194.59 | | 23,610,194.59 | |
| 11/30/2020 | 116,433.84 | | 710,246.40 | 23,610,194.59 | | 23,610,194.59 | |
| 12/31/2020 | 120,314.96 | | 830,561.36 | 23,610,194.59 | | 23,610,194.59 | |
| 1/14/2021 | 54,335.79 | (830,561.36) | 54,335.79 | 23,610,194.59 | (575,550.56) | 23,034,644.03 | (1,406,111.92) |
| 1/31/2021 | 64,370.79 | | 118,706.58 | 23,034,644.03 | | 23,034,644.03 | |
| 2/28/2021 | 106,022.47 | | 224,729.05 | 23,034,644.03 | | 23,034,644.03 | |
| 3/31/2021 | 117,382.02 | | 342,111.07 | 23,034,644.03 | | 23,034,644.03 | |
| 4/30/2021 | 113,595.50 | | 455,706.58 | 23,034,644.03 | | 23,034,644.03 | |
| 5/31/2021 | 117,382.02 | | 573,088.60 | 23,034,644.03 | | 23,034,644.03 | |

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|------------|------------|--------------|---------------|---------------|
| 6/30/2021 | 113,595.50 | 686,684.10 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2021 | 117,382.02 | 804,066.13 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2021 | 117,382.02 | 921,448.15 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2021 | 113,595.50 | 1,035,043.65 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2021 | 117,382.02 | 1,152,425.67 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2021 | 113,595.50 | 1,266,021.18 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2021 | 117,382.02 | 1,383,403.20 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2022 | 117,382.02 | 1,500,785.22 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2022 | 106,022.47 | 1,606,807.69 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2022 | 117,382.02 | 1,724,189.72 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2022 | 113,595.50 | 1,837,785.22 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2022 | 117,382.02 | 1,955,167.24 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2022 | 113,595.50 | 2,068,762.75 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2022 | 117,382.02 | 2,186,144.77 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2022 | 117,382.02 | 2,303,526.79 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2022 | 113,595.50 | 2,417,122.29 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2022 | 117,382.02 | 2,534,504.32 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2022 | 113,595.50 | 2,648,099.82 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2022 | 117,382.02 | 2,765,481.84 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2023 | 117,382.02 | 2,882,863.86 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2023 | 106,022.47 | 2,988,886.34 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2023 | 117,382.02 | 3,106,268.36 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2023 | 113,595.50 | 3,219,863.86 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2023 | 117,382.02 | 3,337,245.88 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2023 | 113,595.50 | 3,450,841.39 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2023 | 117,382.02 | 3,568,223.41 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2023 | 117,382.02 | 3,685,605.43 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2023 | 113,595.50 | 3,799,200.94 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2023 | 117,382.02 | 3,916,582.96 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2023 | 113,595.50 | 4,030,178.46 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2023 | 117,382.02 | 4,147,560.48 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2024 | 117,382.02 | 4,264,942.51 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2024 | 109,808.99 | 4,374,751.49 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2024 | 117,382.02 | 4,492,133.52 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2024 | 113,595.50 | 4,605,729.02 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2024 | 117,382.02 | 4,723,111.04 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2024 | 113,595.50 | 4,836,706.55 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2024 | 117,382.02 | 4,954,088.57 | 23,034,644.03 | 23,034,644.03 |

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| 8/31/2024 | 117,382.02 | 5,071,470.59 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2024 | 113,595.50 | 5,185,066.10 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2024 | 117,382.02 | 5,302,448.12 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2024 | 113,595.50 | 5,416,043.62 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2024 | 117,382.02 | 5,533,425.64 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2025 | 117,382.02 | 5,650,807.67 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2025 | 106,022.47 | 5,756,830.14 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2025 | 117,382.02 | 5,874,212.16 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2025 | 113,595.50 | 5,987,807.66 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2025 | 117,382.02 | 6,105,189.68 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2025 | 113,595.50 | 6,218,785.19 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2025 | 117,382.02 | 6,336,167.21 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2025 | 117,382.02 | 6,453,549.23 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2025 | 113,595.50 | 6,567,144.74 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2025 | 117,382.02 | 6,684,526.76 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2025 | 113,595.50 | 6,798,122.26 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2025 | 117,382.02 | 6,915,504.29 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2026 | 117,382.02 | 7,032,886.31 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2026 | 106,022.47 | 7,138,908.78 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2026 | 117,382.02 | 7,256,290.80 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2026 | 113,595.50 | 7,369,886.31 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2026 | 117,382.02 | 7,487,268.33 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2026 | 113,595.50 | 7,600,863.83 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2026 | 117,382.02 | 7,718,245.85 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2026 | 117,382.02 | 7,835,627.87 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2026 | 113,595.50 | 7,949,223.38 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2026 | 117,382.02 | 8,066,605.40 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2026 | 113,595.50 | 8,180,200.91 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2026 | 117,382.02 | 8,297,582.93 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2027 | 117,382.02 | 8,414,964.95 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2027 | 106,022.47 | 8,520,987.42 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2027 | 117,382.02 | 8,638,369.44 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2027 | 113,595.50 | 8,751,964.95 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2027 | 117,382.02 | 8,869,346.97 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2027 | 113,595.50 | 8,982,942.47 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2027 | 117,382.02 | 9,100,324.50 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2027 | 117,382.02 | 9,217,706.52 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2027 | 113,595.50 | 9,331,302.02 | 23,034,644.03 | 23,034,644.03 |

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| 10/31/2027 | 117,382.02 | 9,448,684.04 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2027 | 113,595.50 | 9,562,279.55 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2027 | 117,382.02 | 9,679,661.57 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2028 | 117,382.02 | 9,797,043.59 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2028 | 109,808.99 | 9,906,852.58 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2028 | 117,382.02 | 10,024,234.60 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2028 | 113,595.50 | 10,137,830.11 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2028 | 117,382.02 | 10,255,212.13 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2028 | 113,595.50 | 10,368,807.63 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2028 | 117,382.02 | 10,486,189.65 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2028 | 117,382.02 | 10,603,571.68 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2028 | 113,595.50 | 10,717,167.18 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2028 | 117,382.02 | 10,834,549.20 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2028 | 113,595.50 | 10,948,144.71 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2028 | 117,382.02 | 11,065,526.73 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2029 | 117,382.02 | 11,182,908.75 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2029 | 106,022.47 | 11,288,931.22 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2029 | 117,382.02 | 11,406,313.24 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2029 | 113,595.50 | 11,519,908.75 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2029 | 117,382.02 | 11,637,290.77 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2029 | 113,595.50 | 11,750,886.27 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2029 | 117,382.02 | 11,868,268.30 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2029 | 117,382.02 | 11,985,650.32 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2029 | 113,595.50 | 12,099,245.82 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2029 | 117,382.02 | 12,216,627.84 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2029 | 113,595.50 | 12,330,223.35 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2029 | 117,382.02 | 12,447,605.37 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2030 | 117,382.02 | 12,564,987.39 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2030 | 106,022.47 | 12,671,009.86 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2030 | 117,382.02 | 12,788,391.89 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2030 | 113,595.50 | 12,901,987.39 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2030 | 117,382.02 | 13,019,369.41 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2030 | 113,595.50 | 13,132,964.92 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2030 | 117,382.02 | 13,250,346.94 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2030 | 117,382.02 | 13,367,728.96 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2030 | 113,595.50 | 13,481,324.46 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2030 | 117,382.02 | 13,598,706.49 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2030 | 113,595.50 | 13,712,301.99 | 23,034,644.03 | 23,034,644.03 |

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| 12/31/2030 | 117,382.02 | 13,829,684.01 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2031 | 117,382.02 | 13,947,066.03 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2031 | 106,022.47 | 14,053,088.51 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2031 | 117,382.02 | 14,170,470.53 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2031 | 113,595.50 | 14,284,066.03 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2031 | 117,382.02 | 14,401,448.05 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2031 | 113,595.50 | 14,515,043.56 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2031 | 117,382.02 | 14,632,425.58 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2031 | 117,382.02 | 14,749,807.60 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2031 | 113,595.50 | 14,863,403.11 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2031 | 117,382.02 | 14,980,785.13 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2031 | 113,595.50 | 15,094,380.63 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2031 | 117,382.02 | 15,211,762.65 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2032 | 117,382.02 | 15,329,144.68 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2032 | 109,808.99 | 15,438,953.66 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2032 | 117,382.02 | 15,556,335.69 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2032 | 113,595.50 | 15,669,931.19 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2032 | 117,382.02 | 15,787,313.21 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2032 | 113,595.50 | 15,900,908.72 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2032 | 117,382.02 | 16,018,290.74 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2032 | 117,382.02 | 16,135,672.76 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2032 | 113,595.50 | 16,249,268.27 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2032 | 117,382.02 | 16,366,650.29 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2032 | 113,595.50 | 16,480,245.79 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2032 | 117,382.02 | 16,597,627.81 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2033 | 117,382.02 | 16,715,009.84 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2033 | 106,022.47 | 16,821,032.31 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2033 | 117,382.02 | 16,938,414.33 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2033 | 113,595.50 | 17,052,009.83 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2033 | 117,382.02 | 17,169,391.85 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2033 | 113,595.50 | 17,282,987.36 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2033 | 117,382.02 | 17,400,369.38 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2033 | 117,382.02 | 17,517,751.40 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2033 | 113,595.50 | 17,631,346.91 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2033 | 117,382.02 | 17,748,728.93 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2033 | 113,595.50 | 17,862,324.43 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2033 | 117,382.02 | 17,979,706.46 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2034 | 117,382.02 | 18,097,088.48 | 23,034,644.03 | 23,034,644.03 |

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| 2/28/2034 | 106,022.47 | 18,203,110.95 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2034 | 117,382.02 | 18,320,492.97 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2034 | 113,595.50 | 18,434,088.47 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2034 | 117,382.02 | 18,551,470.50 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2034 | 113,595.50 | 18,665,066.00 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2034 | 117,382.02 | 18,782,448.02 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2034 | 117,382.02 | 18,899,830.04 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2034 | 113,595.50 | 19,013,425.55 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2034 | 117,382.02 | 19,130,807.57 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2034 | 113,595.50 | 19,244,403.08 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2034 | 117,382.02 | 19,361,785.10 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2035 | 117,382.02 | 19,479,167.12 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2035 | 106,022.47 | 19,585,189.59 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2035 | 117,382.02 | 19,702,571.61 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2035 | 113,595.50 | 19,816,167.12 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2035 | 117,382.02 | 19,933,549.14 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2035 | 113,595.50 | 20,047,144.64 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2035 | 117,382.02 | 20,164,526.67 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2035 | 117,382.02 | 20,281,908.69 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2035 | 113,595.50 | 20,395,504.19 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2035 | 117,382.02 | 20,512,886.21 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2035 | 113,595.50 | 20,626,481.72 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2035 | 117,382.02 | 20,743,863.74 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2036 | 117,382.02 | 20,861,245.76 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2036 | 109,808.99 | 20,971,054.75 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2036 | 117,382.02 | 21,088,436.77 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2036 | 113,595.50 | 21,202,032.28 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2036 | 117,382.02 | 21,319,414.30 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2036 | 113,595.50 | 21,433,009.80 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2036 | 117,382.02 | 21,550,391.82 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2036 | 117,382.02 | 21,667,773.85 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2036 | 113,595.50 | 21,781,369.35 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2036 | 117,382.02 | 21,898,751.37 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2036 | 113,595.50 | 22,012,346.88 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2036 | 117,382.02 | 22,129,728.90 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2037 | 117,382.02 | 22,247,110.92 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2037 | 106,022.47 | 22,353,133.39 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2037 | 117,382.02 | 22,470,515.41 | 23,034,644.03 | 23,034,644.03 |

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| 4/30/2037 | 113,595.50 | 22,584,110.92 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2037 | 117,382.02 | 22,701,492.94 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2037 | 113,595.50 | 22,815,088.44 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2037 | 117,382.02 | 22,932,470.47 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2037 | 117,382.02 | 23,049,852.49 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2037 | 113,595.50 | 23,163,447.99 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2037 | 117,382.02 | 23,280,830.01 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2037 | 113,595.50 | 23,394,425.52 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2037 | 117,382.02 | 23,511,807.54 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2038 | 117,382.02 | 23,629,189.56 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2038 | 106,022.47 | 23,735,212.03 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2038 | 117,382.02 | 23,852,594.06 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2038 | 113,595.50 | 23,966,189.56 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2038 | 117,382.02 | 24,083,571.58 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2038 | 113,595.50 | 24,197,167.09 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2038 | 117,382.02 | 24,314,549.11 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2038 | 117,382.02 | 24,431,931.13 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2038 | 113,595.50 | 24,545,526.63 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2038 | 117,382.02 | 24,662,908.66 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2038 | 113,595.50 | 24,776,504.16 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2038 | 117,382.02 | 24,893,886.18 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2039 | 117,382.02 | 25,011,268.20 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2039 | 106,022.47 | 25,117,290.68 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2039 | 117,382.02 | 25,234,672.70 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2039 | 113,595.50 | 25,348,268.20 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2039 | 117,382.02 | 25,465,650.22 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2039 | 113,595.50 | 25,579,245.73 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2039 | 117,382.02 | 25,696,627.75 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2039 | 117,382.02 | 25,814,009.77 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2039 | 113,595.50 | 25,927,605.28 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2039 | 117,382.02 | 26,044,987.30 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2039 | 113,595.50 | 26,158,582.80 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2039 | 117,382.02 | 26,275,964.82 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2040 | 117,382.02 | 26,393,346.85 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2040 | 109,808.99 | 26,503,155.83 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2040 | 117,382.02 | 26,620,537.86 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2040 | 113,595.50 | 26,734,133.36 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2040 | 117,382.02 | 26,851,515.38 | 23,034,644.03 | 23,034,644.03 |

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| 6/30/2040 | 113,595.50 | 26,965,110.89 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2040 | 117,382.02 | 27,082,492.91 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2040 | 117,382.02 | 27,199,874.93 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2040 | 113,595.50 | 27,313,470.44 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2040 | 117,382.02 | 27,430,852.46 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2040 | 113,595.50 | 27,544,447.96 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2040 | 117,382.02 | 27,661,829.98 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2041 | 117,382.02 | 27,779,212.01 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2041 | 106,022.47 | 27,885,234.48 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2041 | 117,382.02 | 28,002,616.50 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2041 | 113,595.50 | 28,116,212.00 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2041 | 117,382.02 | 28,233,594.02 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2041 | 113,595.50 | 28,347,189.53 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2041 | 117,382.02 | 28,464,571.55 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2041 | 117,382.02 | 28,581,953.57 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2041 | 113,595.50 | 28,695,549.08 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2041 | 117,382.02 | 28,812,931.10 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2041 | 113,595.50 | 28,926,526.60 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2041 | 117,382.02 | 29,043,908.63 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2042 | 117,382.02 | 29,161,290.65 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2042 | 106,022.47 | 29,267,313.12 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2042 | 117,382.02 | 29,384,695.14 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2042 | 113,595.50 | 29,498,290.64 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2042 | 117,382.02 | 29,615,672.67 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2042 | 113,595.50 | 29,729,268.17 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2042 | 117,382.02 | 29,846,650.19 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2042 | 117,382.02 | 29,964,032.21 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2042 | 113,595.50 | 30,077,627.72 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2042 | 117,382.02 | 30,195,009.74 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2042 | 113,595.50 | 30,308,605.25 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2042 | 117,382.02 | 30,425,987.27 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2043 | 117,382.02 | 30,543,369.29 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2043 | 106,022.47 | 30,649,391.76 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2043 | 117,382.02 | 30,766,773.78 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2043 | 113,595.50 | 30,880,369.29 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2043 | 117,382.02 | 30,997,751.31 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2043 | 113,595.50 | 31,111,346.81 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2043 | 117,382.02 | 31,228,728.84 | 23,034,644.03 | 23,034,644.03 |

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| 8/31/2043 | 117,382.02 | 31,346,110.86 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2043 | 113,595.50 | 31,459,706.36 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2043 | 117,382.02 | 31,577,088.38 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2043 | 113,595.50 | 31,690,683.89 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2043 | 117,382.02 | 31,808,065.91 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2044 | 117,382.02 | 31,925,447.93 | 23,034,644.03 | 23,034,644.03 |
| 2/29/2044 | 109,808.99 | 32,035,256.92 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2044 | 117,382.02 | 32,152,638.94 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2044 | 113,595.50 | 32,266,234.45 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2044 | 117,382.02 | 32,383,616.47 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2044 | 113,595.50 | 32,497,211.97 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2044 | 117,382.02 | 32,614,593.99 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2044 | 117,382.02 | 32,731,976.02 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2044 | 113,595.50 | 32,845,571.52 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2044 | 117,382.02 | 32,962,953.54 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2044 | 113,595.50 | 33,076,549.05 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2044 | 117,382.02 | 33,193,931.07 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2045 | 117,382.02 | 33,311,313.09 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2045 | 106,022.47 | 33,417,335.56 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2045 | 117,382.02 | 33,534,717.58 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2045 | 113,595.50 | 33,648,313.09 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2045 | 117,382.02 | 33,765,695.11 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2045 | 113,595.50 | 33,879,290.61 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2045 | 117,382.02 | 33,996,672.64 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2045 | 117,382.02 | 34,114,054.66 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2045 | 113,595.50 | 34,227,650.16 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2045 | 117,382.02 | 34,345,032.18 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2045 | 113,595.50 | 34,458,627.69 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2045 | 117,382.02 | 34,576,009.71 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2046 | 117,382.02 | 34,693,391.73 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2046 | 106,022.47 | 34,799,414.20 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2046 | 117,382.02 | 34,916,796.23 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2046 | 113,595.50 | 35,030,391.73 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2046 | 117,382.02 | 35,147,773.75 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2046 | 113,595.50 | 35,261,369.26 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2046 | 117,382.02 | 35,378,751.28 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2046 | 117,382.02 | 35,496,133.30 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2046 | 113,595.50 | 35,609,728.80 | 23,034,644.03 | 23,034,644.03 |

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| 10/31/2046 | 117,382.02 | 35,727,110.83 | 23,034,644.03 | 23,034,644.03 |
| 11/30/2046 | 113,595.50 | 35,840,706.33 | 23,034,644.03 | 23,034,644.03 |
| 12/31/2046 | 117,382.02 | 35,958,088.35 | 23,034,644.03 | 23,034,644.03 |
| 1/31/2047 | 117,382.02 | 36,075,470.37 | 23,034,644.03 | 23,034,644.03 |
| 2/28/2047 | 106,022.47 | 36,181,492.85 | 23,034,644.03 | 23,034,644.03 |
| 3/31/2047 | 117,382.02 | 36,298,874.87 | 23,034,644.03 | 23,034,644.03 |
| 4/30/2047 | 113,595.50 | 36,412,470.37 | 23,034,644.03 | 23,034,644.03 |
| 5/31/2047 | 117,382.02 | 36,529,852.39 | 23,034,644.03 | 23,034,644.03 |
| 6/30/2047 | 113,595.50 | 36,643,447.90 | 23,034,644.03 | 23,034,644.03 |
| 7/31/2047 | 117,382.02 | 36,760,829.92 | 23,034,644.03 | 23,034,644.03 |
| 8/31/2047 | 117,382.02 | 36,878,211.94 | 23,034,644.03 | 23,034,644.03 |
| 9/30/2047 | 113,595.50 | 36,991,807.45 | 23,034,644.03 | 23,034,644.03 |
| 10/31/2047 | 117,382.02 | 37,109,189.47 | 23,034,644.03 | 23,034,644.03 |

HCMLP Notes Receivable**As of 7/31/2020**

| | | | |
|---|-----------|-------------------|--------------------------------|
| NexPoint Advisors | \$ | 23,846,944 | 30 yr Amort (issued 2017) |
| Dugaboy | | 17,788,532 | 30 yr Amort (issued 2017) |
| Highland Capital Management Services | | 6,677,529 | 30 yr Amort (issued 2017) |
| HCRE | | 5,938,670 | 30 yr Amort (issued 2017) |
| Trussway | | 1,004,993 | Due upon maturity - 11/1/2021 |
| SSP Holdings, LLC | | 2,037,898 | Due upon maturity - 11/22/2022 |
| Siepe | | 2,334,606 | Equity conversion option |
| Highland Capital Management Fund Advisors | | 10,530,971 | Demand |
| James Dondero | | 8,911,977 | Demand |
| Multi-Strategy Credit Fund | | 1,269,000 | Demand |
| HCRE | | 4,859,929 | Demand |
| Highland Select Equity Fund | | 3,000,000 | Demand |
| Highland Capital Management Korea | | 3,760,000 | Due upon maturity - 4/21/2037 |
| Highland Capital Management Services | | 934,331 | Demand |
| Total Notes Receivable | \$ | 92,895,380 | |

Demand**29,506,208**

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:19 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

No shared services outstanding. The HCMFA note is a demand note. The NexPoint note Kristin can give the end term. There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021. The attorneys think that BK doesn't change that but don't know for sure at the end of the day. The response should include as I covered in the Board meeting that both entities have the full faith and backing from Jim Dondero and to my knowledge that hasn't changed.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:14 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

I see the below from the 6/30 financials –

NPA: Due to HCMLP and affiliates as of June 30, 2020 - 23,683,000
HCMFA: Due to HCMLP as of June 30, 2020 - 12,286

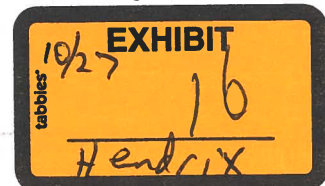
I expect the follow-up question will be regarding terms and structure of the notes and whether any of the shared services invoices are outstanding.

Draft answer below.

Are there any material outstanding amounts currently payable or due in the future (e.g., notes) to HCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

Response: As of June 30, 2020, \$23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and \$12,286,000 remains outstanding to HCMLP from HCMFA. The Notes between HCMLP and NexPoint come due on [DATE]. The Notes between HCMLP and HCMFA come due on [DATE]. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of [DATE].

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:05 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris



<DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

It's on the balance sheet that was provided to the board as part of the 15c materials.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:04 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Could you provide the amounts?

Thanks

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:53 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Yes

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:52 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Good evening Frank, Klos, Kristin – please advise on the below in connection with the Board's follow-up request. Thanks!

Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

From: Lauren Thedford
Sent: Friday, October 2, 2020 2:50 PM
To: Thomas Surgent <TSurgent@HighlandCapital.com>
Cc: Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@Nexpointsecurities.com>; Will Mabry <WMabry@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>
Subject: FW: 15(c) Follow up (10_2_20).DOCX

Thomas – please see attached (and reproduced below) additional 15c follow-up questions from the Board.

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

Note prior question and response on related topic:

With respect to the Estimated Adviser Profitability chart (Item A.2.a in the Board book), is the "Shared Services" line the only expenses attributable to HCMLP? Has any work been done or consideration been given to the solicitation of a third party bid on performing these services or bringing them in house to HCMFA?

Response: Shared services, along with a portion of the investment professional compensation & benefits lines, are the only allocations attributable to HCMLP employees' support of the Advisers. HCMFA does not have the resources to bring these services in-house at this time, but given that HCMLP staffing levels for the provision of the shared services have remained fairly consistent and HCMLP remains capable of providing such shared services on economically reasonable terms, outsourced third-party bids have not been solicited at this time.

2. Are there any material outstanding amounts currently payable or due in the future (e.g., notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?
3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

Please let me know if you would like me to set up a call on Monday to discuss.

From: Louizos, Stacy <SLouizos@BlankRome.com>

Sent: Friday, October 2, 2020 1:54 PM

To: Dustin Norris <DNorris@NexPointSecurities.com>; Lauren Thedford <LThedford@HighlandCapital.com>

Cc: Jason Post <JPost@HighlandCapital.com>; Zornada, George <George.Zornada@klgates.com>; Charles.Miller@klgates.com; Jon-Luc.Dupuy@klgates.com

Subject: 15(c) Follow up (10_2_20).DOCX

Hi Dustin and Lauren—Please see attached follow up questions from the Trustees after the latest Board call. Happy to have a call to discuss if helpful.

Best,
Stacy

Stacy H. Louizos | BLANKROME

1271 Avenue of the Americas | New York, NY 10020

O: 212.885.5147 | F: 917.332.3028 | slouizos@blankrome.com

M: 203.918.3666

*

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HIGHLAND CAPITAL MANAGEMENT, L.P.

January 7, 2021

NexPoint Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, NexPoint Advisors, L.P, entered into that certain promissory note in the original principal amount of \$30,746,812.33 (the "Note") in favor of Highland Capital Management, L.P. ("Payee").

As set forth in Section 2 of the Note, accrued interest and principal on the Note is due and payable in thirty equal annual payments with each payment due on December 31 of each calendar year. Maker failed to make the payment due on December 31, 2020.

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$24,471,804.98; however, interest continues to accrue under the Note.

The Note is in default, and payment is due immediately. Payments on the Note must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Note or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Note will continue to accrue until the Note is paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer



cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #: 322070381
Bank Name: East West Bank
Account Name: Highland Capital Management, LP
Account #: 5500014686

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: NexPoint Note to HCMLP
Date: Tue, 12 Jan 2021 11:40:17 -0600
Importance: Normal
Inline-Images: image001.jpg

Thank you

From: Kristin Hendrix
Sent: Tuesday, January 12, 2021 11:40 AM
To: Frank Waterhouse
Subject: RE: NexPoint Note to HCMLP

Total outstanding principal is \$23,610,194.59

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, January 12, 2021 11:39 AM
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: NexPoint Note to HCMLP

Thanks. What is the total principal outstanding on the note?

From: Kristin Hendrix <KHendrix@HighlandCapital.com>
Sent: Tuesday, January 12, 2021 11:38 AM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Subject: RE: NexPoint Note to HCMLP

This is all accrued interest, as they have already met their minimum principal paydown requirement for the year.

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, January 12, 2021 11:31 AM
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: NexPoint Note to HCMLP

Whats the total principal?

From: Kristin Hendrix <KHendrix@HighlandCapital.com>
Sent: Tuesday, January 12, 2021 11:27 AM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Subject: RE: NexPoint Note to HCMLP

It was due on 12/31 for a total of \$1,406,112.



From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, January 12, 2021 11:15 AM
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: NexPoint Note to HCMLP

Kristin-

When was the last amort payment due? What was the amount?

Thanks

Frank

FRANK WATERHOUSE | PARTNER & CHIEF FINANCIAL OFFICER



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.2538 | F: 972.828.4147

fwaterhouse@highlandcapital.com | www.highlandcapital.com

David Klos - October 27, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

--o0o--

HIGHLAND CAPITAL MANAGEMENT,
L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.,

Defendants.

)

)

)

)

)

) No. 21-03004-sgj

)

)

)

)

)

DEPOSITION OF

DAVID KLOS

October 27, 2021

DEPOSITION OF DAVID KLOS, produced as a
witness, duly sworn by me via videoconference at the
instance of the DEFENDANTS, was taken in the
above-styled and numbered cause on October 27, 2021,
from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS,
CSR, RPR, in and for the State of Texas, reported by
computerized machine shorthand, at 500 North Akard
Street, 38th Floor, Dallas, Texas.

David Klos - October 27, 2021

APPEARANCES

MUNSCH, HARDT, KOPF & HARR, PC, 500 North Akard Street, Suite 3800, Dallas, TX 75201, represented by DAVOR RUKAVINA, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants.

Email: drukavina@munsch.com

PACHULSKI, STANG, ZIEHL & JONES, 780 Third Avenue, 34th Floor, New York, NY 10017-2024, represented by JOHN A. MORRIS, Attorney at Law, appeared via videoconference as counsel on behalf of the Plaintiff.

Email: jmorris@pszjlaw.com

STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.

Email: michael.aigen@stinson.com

David Klos - October 27, 2021

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INDEX

PAGE

| | |
|-------------------------------------|-----|
| Examination by MR. RUKAVINA | 4 |
| Examination by MR. AIGEN | 95 |
| Examination by MR. MORRIS | 109 |
| Further Examination by MR. RUKAVINA | 127 |

(No exhibits marked.)

David Klos - October 27, 2021

1 DAVID KLOS,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 Q. (BY MR. RUKAVINA) Sir, state your name for
5 the record, please.

6 A. David Klos.

7 Q. K-l-o-s?

8 A. K-l-o-s.

9 Q. What's your date of birth?

10 A. May 6, 1982.

11 Q. And where do you live?

12 A. I live in Dallas.

13 Q. What's your educational background?

14 A. Undergraduate and graduate degrees. I went
15 to undergrad at Boston College, graduate school at SMU,
16 with a degree in, Master's of Science in accounting and
17 MBA from SMU.

18 Q. Do you hold any professional licenses?

19 A. CPA in the state of Texas and, I don't know
20 if it's technically a license, but Series 27 from
21 FINRA.

22 Q. And when did you get your CPA license?

23 A. I don't recall specifically, but it would
24 have been probably in the '08, '09 time frame.

25 Q. Is it current?

David Klos - October 27, 2021

1 A. As far as I know.

2 Q. Have you ever been disciplined or threatened
3 with disciplinary proceedings?

4 A. No.

5 Q. And your relevant work experience, please,
6 starting with college and afterwards?

7 A. Sure. Out of grad school I started working
8 at Deloitte in Boston. I worked at Deloitte for
9 approximately three and a half years, between the
10 Boston office and the Dallas office.

11 And then I began working at Highland Capital
12 Management in March of 2009 and I've been at Highland
13 since then.

14 Q. And when you joined Highland in March of
15 2009, what was your title or your role at that time?

16 A. My title, if I remember correctly, was
17 valuation senior analyst. I'm not certain if that was
18 exactly it, but it was something along those lines.

19 Q. Was it in the valuation group?

20 A. Yes.

21 Q. And then give me your -- today you're the CFO
22 of Highland; correct?

23 A. Correct.

24 Q. So give me the progression from valuation
25 analyst to CFO with, to the best of your recollection,

David Klos - October 27, 2021

1 the approximate year that you were promoted, et cetera?

2 A. Sure. I was in the valuation role from
3 basically March of 2009 to end of 2009.

4 I was then brought over to what we call the
5 corporate accounting team, so doing the accounting for
6 Highland Capital Management, LP and of the other
7 advisor-type entities, where I was primarily focused on
8 budgeting and forecasting, credit facility compliance.

9 That took from roughly 2010 until I think
10 middle of 2011, at which point I was moved over to the
11 fund accounting group, so doing hedge fund accounting,
12 which was a short role, really, for probably three or
13 four months.

14 At which point I was brought back to the
15 corporate team and also put in charge of the valuation
16 group. I held that role in some way, shape, or form
17 more or less continuously for the next several years,
18 although certainly my role evolved and changed.

19 But in terms of the groups that I had
20 oversight over, those were the groups. Like I said, my
21 role definitely evolved over time from 2011.

22 Q. So by 2017 what was your title?

23 A. So, yeah, by that time, I was, I believe,
24 controller. I might have still been assistant
25 controller.

David Klos - October 27, 2021

1 There were a few title changes in between
2 there. I think at one point I was manager, at one
3 point I was senior manager, at one point I was
4 assistant controller and at one point I was controller.

5 I can't remember the exact times of all of
6 those break points.

7 Q. Let me pause you. When you were assistant
8 controller, who was the controller?

9 A. There was quite a bit of time where I was
10 assistant controller and we didn't have a controller.
11 I couldn't tell you the exact time frame, but there was
12 definitely an extended time frame.

13 And then in April of 2020, our existing chief
14 accounting officer left and I assumed his
15 responsibilities at that time.

16 Q. Let me pause you. That's a new term for me.
17 Chief accounting officer?

18 A. Uh-huh.

19 Q. Who was that person?

20 A. The person that left?

21 Q. The person that was the chief accounting
22 officer until April 2020.

23 A. Cliff Stoops.

24 Q. And do you have any idea or knowledge whether
25 at Highland that was like an officer-level position?

David Klos - October 27, 2021

1 A. It was not. It was more of a term of art, I
2 would describe it. So it -- so, yeah --

3 Q. To the best of your recollection, when did
4 you become the controller at Highland Capital
5 Management, LP?

6 A. I couldn't pin down a specific date. Like I
7 said, the responsibilities were very similar. I would
8 guess the change from assistant controller to
9 controller was probably in the, most likely in the '16,
10 '17, maybe '18 time frame.

11 Q. Can we agree that as of May 1, 2019, you were
12 the controller at Highland?

13 A. Yes.

14 Q. So let's focus on that time frame, May 2019,
15 and you're the controller. Who do you report to at
16 Highland?

17 A. Frank Waterhouse.

18 Q. The CFO?

19 A. Correct.

20 Q. No one in between you and him?

21 A. Correct.

22 Q. So what -- explain to me the role between the
23 chief accounting officer and the chief financial
24 officer in that time frame, '19, '20?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 THE WITNESS: Very little. Like I said,
3 chief accounting officer was more of a term of art.
4 What that role actually had oversight of was our retail
5 fund accounting, institutional fund accounting,
6 operations, so loan settlement and treasury.

7 And probably another department or two that
8 I'm forgetting, but it did not have any oversight over
9 the corporate accounting group.

10 Q. (BY MR. RUKAVINA) And in May of 2019, as the
11 controller, what were -- what was your role or what
12 were your duties?

13 A. In May of 2019 I was at that point still
14 overseeing the valuation group. I was overseeing the
15 corporate accounting group, which my primary direct
16 report there was Kristin Hendrix, who really was the
17 day-to-day person. But I certainly oversaw her.

18 Q. By that you mean the person that answers to
19 you?

20 A. Correct. Sorry. If I flipped that, I
21 apologize. So I was overseeing that group, which had,
22 you know, fairly broad responsibilities.

23 In terms of, you know, accounting for the
24 Advisor, doing forecasts when they were called for,
25 performing the audit every year, managing cash,

David Klos - October 27, 2021

1 processing payroll, things of that nature.

2 And then at that time I was also put in
3 charge of one of the public REITs that was launching at
4 the time under the NexPoint flag. And getting that
5 team started.

6 Q. Did you mention that in May of 2019 you were
7 still involved with the valuation group?

8 A. I did.

9 Q. Did you have a title at the valuation group?

10 A. Nothing distinct from my overall controller
11 title. These titles were often, like I said, terms of
12 art, whether it was controller or chief accounting
13 officer.

14 Q. What did the valuation group at Highland do?

15 A. Well, valuation group was really a liaison
16 with both third-party pricing providers, pricing
17 services, brokers on the street, front office, members
18 at Highland.

19 To, you know, to work on valuing the
20 securities held across the platform, both for Highland
21 HCMLP managed funds as well as affiliated managed
22 funds.

23 Q. So who did -- did you report to anyone at the
24 valuation group? In other words, did it have its own
25 separate hierarchy kind of?

David Klos - October 27, 2021

1 A. Frank Waterhouse.

2 Q. And were --

3 A. I should clarify too, that the valuation team
4 isn't ultimately responsible for the valuations
5 themselves, but they do act in this liaison role.

6 Q. Perhaps that's my confusion. Is there a
7 separate group that handles just valuation?

8 A. No.

9 Q. Is there an outside consultancy that handled
10 that in May of 2019?

11 A. I don't know if I would call it consultancy,
12 but there was a third-party valuation service provider
13 that would do certain of the, call it illiquid, harder
14 to value securities.

15 Q. So would you say that you were pretty busy in
16 April, May 2019?

17 MR. MORRIS: Objection to the form of the
18 question.

19 THE WITNESS: I've been busy throughout my
20 career.

21 Q. (BY MR. RUKAVINA) In April, May, June 2019,
22 how many hours a month do you estimate you worked for
23 Highland?

24 MR. MORRIS: Objection to the form of the
25 question.

David Klos - October 27, 2021

1 THE WITNESS: I don't remember. A
2 significant number.

3 Q. (BY MR. RUKAVINA) Certainly full-time?

4 A. Absolutely.

5 Q. Would you say that you were working more than
6 200 hours a month in that time frame for Highland?

7 A. I don't know how many hours. I should
8 clarify, we're using Highland very liberally. When I
9 say Highland, supporting the entire apparatus,
10 platform. Significant number of hours at that time,
11 and before and after.

12 Q. And let's explore that a little bit. You
13 mentioned one of the funds for NexPoint. I'd like to
14 talk about NexPoint Advisors, LP, just NexPoint
15 Advisors, LP.

16 Did you ever have an official role or title
17 with NexPoint Advisors, LP?

18 A. Not that I can remember.

19 Q. Do you know if you were ever the controller
20 for that entity?

21 A. I'm not certain. I'm not certain.

22 Q. But I take it that pursuant to the shared
23 services agreement you, as an employee of Highland,
24 were providing services on behalf of NexPoint?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 THE WITNESS: I provided many of the same
3 services for NexPoint Advisors that I provided for
4 Highland, similar types of services.

5 Q. (BY MR. RUKAVINA) And briefly about Highland
6 Capital Management Fund Advisors, LP, HCMFA, did you
7 ever have like an official title or role with that
8 entity, to your knowledge?

9 A. Again, not that I can remember.

10 Q. Not to your knowledge, the controller ever of
11 that entity?

12 A. I'm not certain whether I was or not.

13 Q. But you provided services to that entity as
14 part of your role at Highland pursuant to shared
15 services?

16 A. Similar to NexPoint as I described.

17 Q. When you were controller of Highland, was
18 that an officer-level position at Highland?

19 A. No.

20 Q. When did you become the chief financial
21 officer of Highland?

22 A. Chief financial officer?

23 Q. Uh-huh.

24 A. 2021, March.

25 Q. After Mr. Waterhouse was gone?

David Klos - October 27, 2021

1 A. Yes.

2 Q. And I'm going to ask you a little bit about
3 your compensation today at Highland.

4 You don't have to give me specific numbers
5 unless I ask you, please, but I take it you have a base
6 compensation?

7 A. Yes, I have a base.

8 Q. Do you have any bonus structure compensation?

9 A. Yes, I have a bonus.

10 Q. And what is that bonus number or whether it's
11 paid out based upon or contingent upon?

12 MR. MORRIS: Objection to the form of the
13 question.

14 THE WITNESS: As I understand, it's based on
15 my offer letter.

16 Q. (BY MR. RUKAVINA) On your what?

17 A. My letter for extending an offer.

18 Q. Tell me, what is your -- without having to
19 use express numbers, what is your bonus compensation?
20 When is it paid, et cetera?

21 A. Yeah, so it's not too dissimilar from the
22 prior Highland plan that has semiannual installments
23 payable. And then there's a, kind of an end of plan
24 bonus when -- I don't remember the specifics on exactly
25 what triggers that, but it's back-ended in the plan.

David Klos - October 27, 2021

1 Q. Do you have an expectation as to when the
2 winding down and monetization of Highland and its
3 assets will be complete?

4 A. That's very hard to speculate, especially
5 given the amount of litigation that's going on because
6 I don't know when that's going to play out and that's a
7 material asset.

8 Q. Have you discussed with Mr. Seery how long
9 that might be?

10 A. Not that I can specifically remember.

11 Q. Do you believe it will be at least probably
12 two years, from today?

13 A. I don't know.

14 Q. This bonus compensation, does it or any
15 amount of it depend on how well Highland or the
16 claimant trust, how well they do vis-a-vis collecting
17 money from creditors?

18 A. Not that I can think of. I'd have to
19 probably go back and look and understand the back-end
20 piece to say definitively.

21 Q. And back-end piece, does that mean whenever
22 the winding down is completed?

23 A. Yeah, like I said, I'm not exactly -- I'm not
24 completely facile with the exact timing, if it's
25 completed 100 percent or 80 percent, what kind of

David Klos - October 27, 2021

1 qualitative considerations go into that. But
2 substantially completed.

3 Q. Sitting here today, do you think or believe
4 that any portion of your compensation over the next
5 however long it takes to wind down Highland depends on
6 how much Highland recovers from the litigation
7 regarding promissory notes?

8 A. I really take exception to that question
9 because the insinuation is that it's going to somehow
10 change my answers here, and it's absolutely not.

11 How litigation, it may or may not affect my
12 ultimate compensation, but that's not going to affect
13 one iota of the answers I give you today or at any
14 time, whether I'm on or off the record.

15 Q. Fair enough. So you're going to testify
16 today truthfully regardless of your compensation. I
17 got you; right? Correct?

18 A. I didn't follow what you just asked me.

19 Q. You're going to testify today truthfully
20 regardless of how these events may or may not affect
21 your compensation; right?

22 A. It's such a loaded question I can't even
23 begin to answer that.

24 Q. So sitting here today -- I want to ask you
25 the same question I did before, and your answer to me

David Klos - October 27, 2021

1 was that you took exception to the insinuation. Now
2 I'd like you to answer my question.

3 Which is, sitting here today, do you believe
4 that any part of your compensation in the future,
5 however long it takes to wind down Highland, is going
6 to depend on how well Highland does in these
7 litigations concerning the notes?

8 A. I believe my ultimate compensation will
9 depend on how long this process takes, which I don't
10 know, and ultimate recoveries to trust beneficiaries
11 under the plan.

12 And so I do expect that it will vary, but I
13 would reiterate my earlier comment.

14 Q. So sitting here today, you understand that if
15 the trust beneficiaries recover more, then you might be
16 compensated more?

17 A. That's possible.

18 Q. Well, sir, I'm not trying to be a smart ass,
19 but --

20 MR. MORRIS: Actually, you're coming awfully
21 close, just to be clear, so be careful, because I'm
22 offended as well. But continue.

23 MR. RUKAVINA: I'm entitled to ask the man
24 about his compensation.

25 MR. MORRIS: Right. And your clients have

David Klos - October 27, 2021

1 \$75 million, hard dollars at stake in this litigation,
2 so we should never believe anything that he says? Is
3 that where we are now?

4 Q. (BY MR. RUKAVINA) Sir, again, what is your
5 bonus compensation as it relates to how well the
6 claimant trust does? Do you remember or not?

7 A. I don't know that that's even something that
8 I could know at this point.

9 Q. In preparing for this deposition, I take it
10 you spoke to legal counsel, and I'm not entitled to
11 know that and I'm not asking that.

12 But did you talk to anyone else?

13 A. I've spoken in general terms to Mr. Seery.

14 Q. Okay. Anyone else?

15 A. I've spoken, again in general terms, to
16 Kristin Hendrix.

17 Q. Anyone else?

18 A. Not that I can think of.

19 Q. Now, I understand you spoke to Ms. Hendrix
20 when legal counsel was present; right?

21 A. Yes.

22 Q. So let's exclude that conversation.

23 Did you have any conversations with
24 Ms. Hendrix regarding this deposition or this
25 litigation at which counsel was not present?

David Klos - October 27, 2021

1 A. Not in any substance.

2 Q. And when do you recall you might have had
3 those discussions with her?

4 A. I'm not even sure.

5 Q. Would it have been recently or like 9,
6 10 months ago?

7 A. No, it would have been recently.

8 Q. And with Mr. Seery, when did you have a
9 general conversation with Mr. Seery?

10 A. I've had, you know, one or more general
11 conversations with Mr. Seery. It's my understanding
12 that he was the 30(b)(6) witness, and he had questions
13 in preparation for his role in that.

14 Q. So that would have been before last Thursday
15 that you talked to him? I'll represent to you that
16 that's when his deposition was.

17 A. Yeah, if I'm accepting that representation,
18 yes, prior to.

19 Q. Other than that conversation with respect to
20 him preparing for the 30(b)(6), did you have a
21 discussion with him about this litigation as it might
22 relate to your deposition?

23 A. I don't believe so in terms of relating to
24 this deposition. We've talked at length about the
25 notes more generally.

David Klos - October 27, 2021

1 Q. And we'll go through that I'm sure.

2 So other than the conversations with
3 Ms. Hendrix and Mr. Seery and, of course, with counsel
4 that I'm not entitled to know about, did you discuss
5 this deposition or what you might be asked today with
6 anyone else?

7 A. No.

8 Q. Okay. Did you read all or any portions of
9 the deposition of Frank Waterhouse?

10 A. Certainly didn't read all of it. I have a
11 general understanding of the topics that were -- that's
12 a bad way to frame it.

13 I have a general understanding of a few
14 points that were covered in his deposition.

15 Q. Were you provided -- were you provided the
16 exact pages of any of his deposition?

17 MR. MORRIS: Objection. Direct him not to
18 answer.

19 MR. RUKAVINA: You're going to direct him not
20 to answer whether he read --

21 MR. MORRIS: If you're asking him whether I
22 directed him to particular --

23 MR. RUKAVINA: I didn't ask that.

24 MR. MORRIS: Rephrase your question.

25 Q. (BY MR. RUKAVINA) Did you read any pages

David Klos - October 27, 2021

1 from Mr. Waterhouse's deposition?

2 MR. MORRIS: Objection. Asked and answered.

3 You can answer again.

4 THE WITNESS: I don't recall -- I don't
5 recall reading it.

6 Q. (BY MR. RUKAVINA) So were you provided a
7 summary of his deposition?

8 A. I have had discussions with Mr. Morris in
9 preparation for this deposition.

10 Q. That's fine. And we can stop there.

11 Did you read or -- did you read the whole or
12 any portion of Mr. Seery's deposition?

13 A. No, I don't believe I -- no, I don't believe
14 so.

15 Q. Is it the same answer, that whatever you
16 discussed would have been through counsel?

17 A. Yes.

18 Q. Did you see any of the videotape of either
19 Mr. Waterhouse's or Mr. Seery's deposition?

20 A. No.

21 Q. So let's talk about the NexPoint
22 \$30.7 million note.

23 You're familiar with that note; right?

24 MR. MORRIS: Objection to the form of the
25 question.

David Klos - October 27, 2021

1 THE WITNESS: Before I answer that, I'd like
2 to see the note.

3 Q. (BY MR. RUKAVINA) It's in here. I'm looking
4 for the exhibit number. It's in here somewhere.

5 A. Yes, I'm familiar with this note.

6 Q. Are you familiar with anything having to do
7 with the negotiation or execution of this note?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: Can you repeat.

11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.
12 Did you have anything to do, back on or about
13 May 31, 2017, with the negotiation or execution of this
14 promissory note?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: Nothing with respect to the
18 negotiation --

19 Q. (BY MR. RUKAVINA) I'm sorry.

20 A. In terms of the execution, I believe I
21 coordinated with internal counsel, who drafted the
22 note, and I can't remember -- I can't recall one way or
23 the other if I assisted in actually physically
24 receiving signatures. I just don't remember.

25 Q. Do you remember who that internal counsel

David Klos - October 27, 2021

1 was?

2 A. Yeah, it was Lauren Thedford, who is Highland
3 in-house counsel.

4 Q. She's a lawyer?

5 A. Yes.

6 Q. Do you recall from that -- strike that.

7 Did you know on or about May 31, 2017 what
8 the purpose or reason behind Exhibit 13, this
9 promissory note, was?

10 MR. MORRIS: Objection to the form of the
11 question.

12 THE WITNESS: The purpose was to take
13 existing notes, which I believe were exclusively demand
14 notes, I'm not a hundred percent certain on that, and
15 roll them into a single note that would have a 30-year
16 amortization period.

17 Q. (BY MR. RUKAVINA) Do you know why that was
18 done?

19 A. I believe it was done probably for a number
20 of reasons, one of which was to ensure some level of
21 cash flow back to Highland, when I say Highland,
22 Highland Capital Management, LP, on an annual basis.

23 Q. Was that a concern at Highland Capital
24 Management, that it wasn't getting any level of cash
25 flow back?

David Klos - October 27, 2021

1 A. It wasn't a concern of mine. I don't know if
2 it was a concern of others.

3 Q. Do you recall whether any auditor ever raised
4 that concern?

5 A. The auditors did raise that in conjunction
6 with the audit that was concluding around this time.
7 So yes, they did raise it, you know, probably in the
8 May of 2017 time frame.

9 Q. Do you know who decided that it would be a
10 30-year term note? By that I mean 30 years.

11 A. Jim Dondero.

12 Q. Do you know if he decided that in connection
13 with discussions with anybody or, to your knowledge, he
14 just decided?

15 A. As far as I know he just decided it. I
16 believe there was a draft at one point that was for
17 20 years, and he wanted to do 30.

18 Q. So this note is executed in May 31, 2017.
19 Did you have any further role prior to, let's say,
20 December 1, 2020 with respect to anything to do with
21 this promissory note?

22 A. Sorry, tell me the date again.

23 Q. From execution of the note until December 1,
24 2020?

25 A. And the question was?

David Klos - October 27, 2021

1 Q. Did you have any role in that time frame with
2 respect to this promissory note on behalf of Highland?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: I don't know how to answer
6 that, it's such an open-ended question. I just don't
7 know how to respond to that.

8 Q. (BY MR. RUKAVINA) If payments were made on
9 this note, would you have any duty to record or credit
10 those payments?

11 MR. MORRIS: Objection to the form of the
12 question.

13 THE WITNESS: I wouldn't have personally in
14 my role, but my team would have been involved in the
15 recording of those.

16 Q. (BY MR. RUKAVINA) And when payments were due
17 on this note, did you personally have any role with
18 respect to doing anything to facilitate those payments?

19 A. When payments were due did I have anything --
20 yes.

21 Q. What was your role?

22 A. So my role, as part of the corporate team,
23 part of our role is managing cash at the various
24 entities. So I was involved in weekly cash meetings,
25 where things like upcoming, whether it's an obligation

David Klos - October 27, 2021

1 or a receipt, would be put on people's radars.

2 And we would, in connection with the 30-year
3 notes such as this one from NexPoint, we would either
4 confer with Jim or -- certainly Jim. Also likely his
5 accountant.

6 In terms of teeing them up to make sure that
7 they were prepared from a cash flow statement to make
8 the payment.

9 Q. What do you mean by his accountant?

10 A. Melissa Schroth.

11 Q. What do you mean by his? That's a new name
12 to me. Who is Melissa Schroth?

13 A. I find it hard to believe that she's a new
14 name to you. But I think her title was executive
15 accountant, and she was the keeper of Jim's -- many of
16 Jim's trusts and personal entities.

17 Q. Was she a Highland employee?

18 A. She was. And when I say Highland, I should
19 be clear, Highland Capital Management, LP.

20 Q. So when you say Jim's accountant, she was
21 still a debtor employee, just that she handled
22 primarily Jim's personal matters?

23 A. She was still a Highland Capital Management,
24 LP employee but she did Jim's personal matters.

25 Q. Did you have any role at either Highland

David Klos - October 27, 2021

1 Capital Management or NexPoint Advisors as to a
2 decision as to whether any prepayments on this note
3 would ever be made?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: Can you repeat.

7 Q. (BY MR. RUKAVINA) Let's start from scratch.

8 Do you have any memory of any payments being
9 made on this note, Exhibit 13, prior to their scheduled
10 dates of payment?

11 A. There were payments on -- and to be clear,
12 we're talking about the original 30.7- NexPoint
13 promissory note? There were payments that I recall
14 happening throughout 2019 on this note.

15 Q. And we can look at Exhibit 14.

16 MR. MORRIS: What number?

17 MR. RUKAVINA: 14, 1-4.

18 Q. (BY MR. RUKAVINA) And those are only
19 numbered because Ms. Hendrix, they were used for her
20 deposition.

21 A. Sure. Just trying to keep these in order, I
22 apologize. Got it.

23 Q. Do you recognize Exhibit 14?

24 A. Generally. I can't say that I can verify
25 that this is completely accurate. But it looks

David Klos - October 27, 2021

1 familiar to a loan amortization schedule.

2 Q. Would it have been maintained by Highland?

3 A. Yes.

4 Q. And I'll tell you that no one has yet to
5 authenticate this with a hundred percent precision, so
6 I'm not asking you to ratify these numbers, but let's
7 assume that they are what they are.

8 This does purport to show on the second page
9 a number of transfers in 2019, which goes along with
10 your recent answer.

11 Do you see those, sir?

12 A. I do.

13 Q. In particular, 750,000, then 1.3 million,
14 300,000, 2.1 million, 630,000, 1.3 million.

15 You see all those, sir?

16 A. Yes, I see every one.

17 Q. Do you have any memory, without going into
18 those transfers of those dates to the dollar, do you
19 have any memory that those transfers were made?

20 A. Yes. Again, not a specific recollection of
21 where I was at the time, but yes, I know that these
22 transfers were made.

23 Q. Do you know why they were made in those
24 amounts and on those dates?

25 A. No, not without speculating.

David Klos - October 27, 2021

1 Q. What would be your speculation if you were to
2 speculate?

3 A. My speculation would be that it would be for
4 liquidity needs at HCMLP, Highland Capital Management,
5 LP, needing liquidity to operate. Again, that's
6 speculation. I don't know for a fact that that's true,
7 but that's what I would assume.

8 Q. Who would have made those decisions in 2019
9 to transfer those funds?

10 MR. MORRIS: Objection to the form of the
11 question.

12 THE WITNESS: Yeah, it would have been either
13 Frank or Jim. I can't say with certainty, but one of
14 the two. When I say Jim, I should be clear,
15 Mr. Dondero.

16 Q. (BY MR. RUKAVINA) Between January and
17 July 2019, do you have any recollection that there was
18 any particular liquidity issue or need at Highland
19 Capital Management?

20 A. Yeah, Highland was dealing with liquidity
21 problems throughout 2019. Maybe not every single day
22 of the year, but we were continuously needing to bridge
23 liquidity.

24 Q. And you joined Highland in 2009. From that
25 point in time, 2009, through 2019, was there any

David Klos - October 27, 2021

1 practice at the enterprise of those businesses to
2 transfer funds between each other on a basis of when
3 one needed it and one had it?

4 A. Yes, that was a fairly, generally speaking,
5 that was a fairly common practice, of using different
6 entities within the overall structure to bridge
7 liquidity.

8 Q. Would that have been Mr. Dondero who, in the
9 final analysis, would have made those decisions?

10 A. Maybe not a hundred percent, but I'd say
11 the -- if not a hundred percent, certainly most.

12 Q. And who else might have participated,
13 Mr. Waterhouse?

14 A. Potentially Mr. Waterhouse. And the reason I
15 hedge on that a little bit is I don't think Frank would
16 have made any of these decisions on his own either.
17 But I may have heard them from Frank via Jim.

18 Q. So in those same years, were you ever asked
19 by Mr. Dondero or Mr. Waterhouse as to whether funds
20 should be transferred from one entity to another for
21 liquidity purposes?

22 A. Can you ask that again, please.

23 Q. Yes. Trying to understand, were you part of
24 those discussions as to whether these transfers should
25 be made, or did you just learn that a decision to make

David Klos - October 27, 2021

1 them had been made and you executed them?

2 A. Both, depending on the circumstances.

3 Q. So sometimes you would be brought into a
4 discussion?

5 A. Yes.

6 Q. And can you think of any particular example?

7 A. Of when I was brought into the discussion of
8 whether to transfer? I can't think of an individual
9 example but we met quite regularly with Jim on cash.

10 So to the extent that either he needed cash
11 on one of his entities, he might let us know that. Or
12 to the extent that Highland needed cash, we might let
13 him know that and ask for basically his assistance in
14 helping us to meet our own cash needs.

15 Q. And did he usually find a way to facilitate
16 the cash need either at one of his entities or at
17 Highland?

18 A. I suppose until October 16 of 2019.

19 Q. Yes. Prior to bankruptcy, do you recall any
20 instance where one entity wasn't able to transfer funds
21 to another for liquidity purposes?

22 A. I can't think of a specific situation. But
23 I'm sure there were situations where -- you know, cash
24 was always something that was being juggled, so I don't
25 know that necessarily liquidity could be met the same

David Klos - October 27, 2021

1 day.

2 But eventually we were able to manage through
3 those situations, you know, oftentimes through some of
4 these loans.

5 Q. In instances that you may remember when
6 Highland Capital Management needed liquidity, do you
7 know how Mr. Dondero decided from which other entity to
8 transfer the cash?

9 A. I can't step into his brain and think about
10 his decision-making process, but if I was going to
11 oversimplify it I would speculate that it would be
12 based on who has cash in that moment.

13 Q. Would he ask you or someone on your team who
14 had cash?

15 A. At times, depending on which entity we're
16 talking about. Because my team certainly didn't have
17 responsibility for every single entity in the
18 enterprise, but we did have responsibility for some.

19 Q. And if your team -- so -- strike that.

20 So over the general -- talking about
21 generally now, over those 10 years when there were
22 these intercompany transfers for liquidity purposes,
23 how were they booked by the debtor, by Highland Capital
24 Management?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 THE WITNESS: Help me on the direction. So
3 this is money that Highland is receiving or money that
4 Highland is sending?

5 Q. (BY MR. RUKAVINA) Sending out.

6 A. Sending out. So this is -- in the scenario
7 that you're describing, this money that Highland is
8 sending out to meet some other corporate obligor's
9 liquidity needs?

10 Q. Yes, sir.

11 A. So those would be booked as a loan. I
12 would -- I need to hedge a little bit because I'm not
13 a hundred percent certain, but I would say if not
14 exclusively via loans close to exclusively.

15 Q. And would they -- strike that.

16 Would they usually be papered up with a
17 promissory note?

18 A. Yes.

19 Q. Now, why was that the general course during
20 10 years? Was there a policy and procedure in place,
21 or would Dondero say book it as a loan, or was that
22 just the right thing to do from an accounting
23 perspective?

24 MR. MORRIS: Objection to the form of the
25 question.

David Klos - October 27, 2021

1 THE WITNESS: At the end of the day it's at
2 the direction of Jim Dondero, so I can't tell you
3 exactly why he wanted it to be done that way. But that
4 was certainly the practice of how it was done in those
5 situations.

6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim
7 Dondero ever tell you or anyone else that when Highland
8 is transferring funds to one of his affiliated entities
9 that it should always be booked as a loan?

10 A. So remembering 10 years' worth of
11 conversations, I can't remember a specific instance
12 where he would have said, always book every single
13 transaction I direct you to do as a loan. However,
14 that was the practice.

15 Q. Different question.

16 Do you remember that in each instance, and
17 again, that might be unfair over 10 years, but do you
18 remember in each instance when Mr. Dondero said
19 transfer money from Highland to this other entity for
20 liquidity needs that he said book it as a loan?

21 MR. MORRIS: Objection to the form of the
22 question.

23 THE WITNESS: I can't recall with any
24 specificity what he may or may not have specifically
25 said so long ago.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) To your knowledge, was
2 there any written policy or procedure in place at
3 Highland Capital Management with respect to how
4 transfers from Highland to an affiliated entity should
5 be booked or treated?

6 A. No written policy or procedure that I'm aware
7 of.

8 Q. Is it fair to say that by May 2019, the
9 corporate accounting group had handled so many of these
10 transfers that it believed that if Highland was
11 transferring funds to another affiliated entity, it's
12 probably a loan?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: Yeah, I don't know that I can
16 answer that in terms of the corporate accounting team.
17 That just feels way too broad.

18 It was certainly the practice that when
19 somebody needed liquidity and it was appropriate from an
20 accounting perspective, that's how it would be booked.

21 And there was no reason to doubt that that was
22 the appropriate way to do it, particularly with
23 direction from either Frank or Jim.

24 Q. (BY MR. RUKAVINA) Is it your testimony that
25 in each instance that happened, that either Frank or

David Klos - October 27, 2021

1 Jim said, this is a loan, the "this" being the transfer
2 from Highland to an affiliated entity for liquidity
3 purposes?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: I can't recall with that level
7 of specificity if those words came out of Jim's mouth.
8 But with 0 percent doubt in my mind, every single one
9 of those loans was done with the authority of Jim or
10 Frank, or both.

11 Q. (BY MR. RUKAVINA) So going back to this
12 Exhibit 14, now I'm going to ask you about these
13 payments coming in.

14 Assuming that these payments were actually
15 made in 2019 --

16 And I think, John, you sent me this morning,
17 or maybe last night, some bank statements?

18 MR. MORRIS: I actually sent all of the
19 backup for all payments made, I think, under the notes
20 at issue a week or two ago.

21 Q. (BY MR. RUKAVINA) How would -- so assuming
22 that these payments in 2019 that NexPoint made didn't
23 technically have to be made at that point in time, how
24 would Highland have booked these payments?

25 A. So I can't tell the column headers, so you'll

David Klos - October 27, 2021

1 have to excuse me if I flip them.

2 Q. They'll be on the first page. Rip the page
3 off if you need to.

4 A. First one is interest, second one is
5 principal. On the far right is the actual amount of
6 the payment. So, for example, March 29, 750,000.

7 And the -- the column that has the negative
8 411,000 is the application of interest and the 338- is
9 the application of principal.

10 Q. So again, if Highland -- strike that.

11 If NexPoint made a payment that was not
12 technically due at that point in time, it would be
13 recorded as payments on principal and interest?

14 A. It would be recorded as it's reflected in the
15 schedule. So there's an application of interest and an
16 application of principal.

17 Q. So based on your understanding and
18 experience, if that payment wasn't due at that time,
19 would it have been a prepayment by NexPoint?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: Yeah, I'm not sure that it's a
23 prepayment or not. It's certainly a payment. It's
24 certainly voluntary. It's not spelled out under the
25 schedule. I don't know that it's a per se, capital P,

David Klos - October 27, 2021

1 prepayment. I'm just not certain.

2 Q. (BY MR. RUKAVINA) Well, maybe without
3 respect to these specific transfers.

4 Generally, generally, if one of the Dondero
5 affiliates made a payment that wasn't scheduled, how
6 would the debtor have accounted for that payment?

7 A. It would have recorded the payment as a
8 reduction to either or both outstanding accrued
9 interest or principal.

10 Q. You wouldn't call those prepayments?

11 A. I don't know the definition of prepayment.
12 It's a payment. It's off schedule, but I don't know
13 whether it's a per se prepayment.

14 Q. Would that be something in your experience
15 that we would look at the promissory note to maybe
16 determine?

17 MR. MORRIS: Objection to the form of the
18 question.

19 THE WITNESS: I don't know.

20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking
21 you the same question just in different ways.

22 Who decides at the debtor, or how does the
23 debtor decide, if an unscheduled payment is made, how
24 to apply it?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 Q. (BY MR. RUKAVINA) And his objection is
3 valid. And just to give you a little bit of a fine
4 point, does someone look at the promissory note to
5 decide that? Or is there some other rule or procedure
6 that someone looks at?

7 MR. MORRIS: Objection to the form of the
8 question.

9 THE WITNESS: So the person -- I don't know
10 that I can specifically name a person because the role
11 probably changed over time.

12 But either our corporate accountant, or the
13 corporate accountant's boss, which was Kristin Hendrix
14 for years, would have been responsible for recording and
15 tracking those payments.

16 So some combination of the corporate
17 accountant and Kristin would have applied those
18 payments, and that rolls up through my and Frank's
19 review ultimately.

20 Q. (BY MR. RUKAVINA) So if I can round off this
21 discussion, I think you told me a few minutes ago that
22 in each instance that Highland was transferring money
23 out to an affiliate.

24 Whether or not you remember Dondero or
25 Waterhouse saying it's a loan, it would have been a

David Klos - October 27, 2021

1 loan because that's how it always was and it was always
2 authorized. Generally correct?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: There were a few "always" and
6 "generallys" in there. And like I said, when it came
7 to liquidity needs, my recollection is that these would
8 be handled via loans.

9 Q. (BY MR. RUKAVINA) And in reverse, if a
10 Dondero entity made a payment prior to a scheduled
11 payment on a note, generally there would be credit
12 against principal and/or interest provided on that
13 note?

14 MR. MORRIS: Objection to the form of the
15 question.

16 THE WITNESS: Generally speaking, yes, if the
17 payment was for payment on the note.

18 Q. (BY MR. RUKAVINA) Well, that goes back to my
19 question.

20 Do you know how these payments on Exhibit 14
21 in 2019 were determined to be payments on these notes,
22 as opposed to a transfer from NexPoint to Highland for
23 some other reason?

24 A. What other reason would it be, if I can be so
25 bold.

David Klos - October 27, 2021

1 Q. Can you think of any other reason in 2019?

2 A. Well, Highland had -- Highland had shared
3 services and intercompany agreements with NexPoint, at
4 this time.

5 But these were not payments that could
6 possibly be confused with those payments. These are
7 off cycle, they're larger amounts, and there's nothing
8 that they could be other than payments against the
9 loan.

10 Q. So I asked you before, and I think you said
11 that you were speculating with respect to these
12 payments, that Highland needed money at that time.

13 Do you recall in 2019 any discussions with
14 anyone, Dondero or Waterhouse, to the effect that
15 NexPoint has excess cash so maybe NexPoint should
16 transfer some money to Highland?

17 MR. MORRIS: Objection. Asked and answered.

18 THE WITNESS: Do I still answer?

19 Q. (BY MR. RUKAVINA) Yes.

20 MR. MORRIS: Yes.

21 THE WITNESS: And sorry, I got lost there.

22 Q. (BY MR. RUKAVINA) Yes. So my predicate was
23 you testified before that you were assuming that these
24 payments were because of a cash need at Highland;
25 right?

David Klos - October 27, 2021

1 A. Correct.

2 Q. So with that predicate my question is, do you
3 recall discussing with Dondero or Waterhouse or with
4 anyone as to why NexPoint would be transferring money
5 to Highland at that time?

6 A. Yes, I would have had conversations with
7 Mr. Dondero or Mr. Waterhouse.

8 Q. And do you remember specifically in 2019 why
9 these transfers were made from NexPoint as opposed to
10 some other Dondero entity?

11 A. Not with specificity, but certainly NexPoint
12 was generating cash at that time, and had the ability
13 to assist with Highland's liquidity.

14 Q. So sitting here today, you've told me
15 generally and logically that you have no specific
16 memory why between January 2019 and August 2019, any of
17 these payments on Exhibit 14 were made by NexPoint?

18 A. I have no specific memory, but I would say
19 with certainty that most or all of this was driven by
20 Highland HCMLP liquidity needs.

21 Q. And most or all of this would have been
22 Highland in the first instance going to NexPoint and
23 saying, hey, can you send us some cash?

24 MR. MORRIS: Objection to the form of the
25 question.

David Klos - October 27, 2021

1 THE WITNESS: Yeah, the premise of that,
2 given that Mr. Dondero is in control of both sides,
3 it's a faulty premise.

4 Q. (BY MR. RUKAVINA) But you told me not that
5 long ago that in these weekly cash meetings that it
6 would be your team at Highland who would go to
7 Mr. Dondero and say Highland has a liquidity issue.

8 So wouldn't that liquidity issue have
9 originated with the Highland team?

10 A. Mr. Dondero is the president of Highland.
11 He's the president of NexPoint. We're employees of
12 Highland. We're also shared services providers for
13 NexPoint.

14 The waters are very muddy in terms of who is
15 wearing what hat in that conversation.

16 Q. But Mr. Dondero doesn't know that Highland
17 has a liquidity issue unless someone from the corporate
18 accounting group tells him, does he?

19 MR. MORRIS: Objection to the form of the
20 question. I hope that's not the case.

21 THE WITNESS: He has the ability to know what
22 our cash position is at any given time, at that time.

23 Q. (BY MR. RUKAVINA) So why would you have
24 these weekly cash meetings with Mr. Waterhouse and
25 sometimes Mr. Dondero?

David Klos - October 27, 2021

1 A. So these were cash forecasts, looking at
2 outlook. I can tell you almost without exception,
3 maybe -- with maybe without exception, be speculating,
4 but those forecasts would be showing negative numbers
5 at Highland, virtually nonstop.

6 And so it was important, my opinion, but it
7 was probably important to Frank to make sure that he
8 was getting in front of Jim to make sure that those
9 needs were being addressed timely.

10 Q. So I've asked that question. I want to ask
11 you a different question.

12 For any of these payments between
13 January 2019 and August 2019 reflected on Exhibit 14,
14 do you have any personal knowledge as to whether they
15 were intended to be prepayments or not?

16 MR. MORRIS: Objection to the form of the
17 question.

18 THE WITNESS: I don't know whether they were
19 intended to be prepayments at that time.

20 Q. (BY MR. RUKAVINA) Sitting here today, seeing
21 this document as a CPA and as a sophisticated person,
22 do you read this Exhibit 14 to indicate that those
23 payments were booked as prepayments?

24 MR. MORRIS: Objection to the form of the
25 question.

David Klos - October 27, 2021

1 THE WITNESS: Again, the term "prepayments"
2 is the one I'm struggling with. I can ascertain that
3 there are payments and they're off schedule. But I
4 don't know that I can ascertain that they're
5 prepayments.

6 Q. (BY MR. RUKAVINA) Well, if a borrower makes
7 a payment that's ahead of schedule, how would that
8 generally be accounted for?

9 MR. MORRIS: Objection to the form of the
10 question.

11 THE WITNESS: It would be accounted for as a
12 reduction of principal or interest or some combination
13 of the two.

14 Q. (BY MR. RUKAVINA) Which would relieve the
15 borrower of having to make that at some point in the
16 future; right?

17 MR. MORRIS: Objection to the form of the
18 question.

19 THE WITNESS: No. The borrower still owes
20 the money. This is showing 23-point -- pick a date.
21 May 31, 23.034-. That there's significant obligations
22 that are still outstanding.

23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm
24 sorry, on June 19, 2019, the borrower made a
25 \$2.1 million payment. That's what this shows; correct?

David Klos - October 27, 2021

1 A. I see that.

2 Q. You're not saying that the borrower would
3 ever have to make that same \$2.1 million payment again,
4 are you?

5 A. No. What I'm saying is, based on that 2.1-
6 payment -- and this is reading this cold.

7 But based on that 2.1- payment, 66,000 was
8 applied to interest, which left zero accrued interest
9 outstanding. 2.03- applied to principal, which left
10 24.7- and change still outstanding.

11 Q. Well, I'm going to ask you about the
12 promissory note then, Exhibit 13, in particular
13 Section 3, where it says prepayment allowed.

14 And the first sentence says, may or -- pardon
15 me, maker may prepay in whole or in part the unpaid
16 principal or accrued interest of this note.

17 Do you see that, sir?

18 A. Yes, I see that.

19 Q. In your experience, can someone prepay
20 accrued interest?

21 MR. MORRIS: Objection to the form of the
22 question.

23 THE WITNESS: The document reads, maker may
24 prepay in whole or in part the unpaid principal or
25 accrued interest of this note. So I read that to say

David Klos - October 27, 2021

1 that the maker may pay outstanding accrued interest, or
2 unpaid principal.

3 Q. (BY MR. RUKAVINA) But my question is, as I
4 understand accrued interest, it means interest that has
5 already occurred or accrued as of the date, like
6 today's date; right?

7 A. Uh-huh.

8 MR. MORRIS: Objection to the form of the
9 question.

10 Q. (BY MR. RUKAVINA) Do you agree with that?

11 Do you agree with that? Accrued interest
12 means interest that has already come due, that has
13 actually happened because interest happens over time.

14 A. Accrued interest --

15 MR. MORRIS: Objection to the form of the
16 question.

17 Q. (BY MR. RUKAVINA) Why don't you start. Why
18 don't you define for me accrued interest.

19 A. Sure. Accrued interest would be outstanding
20 and unpaid interest that -- sorry, it's hard to define
21 it without using the term. But it's interest that's
22 accumulated in respect of a principal amount through a
23 given date.

24 Q. So how do you prepay accrued interest?

25 A. How do you prepay accrued interest. Again,

David Klos - October 27, 2021

1 that's a little bit of a mental jumble.

2 Q. Exactly.

3 A. Well, what I'm...

4 Q. To me one pays accrued interest. But this
5 note says you can prepay accrued interest. So I'm just
6 seeing whether you as a CPA, CFO and controller for
7 years agrees that one can prepay accrued interest?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: Frankly, I don't know if it's
11 possible. That's not how I'm seeing it applied here,
12 based on the quick review of Exhibit 14.

13 Q. (BY MR. RUKAVINA) Well, the next sentence
14 says, any payments on this note shall be applied first
15 to unpaid accrued interest hereon, and then to unpaid
16 principal hereof.

17 Do you see that, sir?

18 A. I see that.

19 Q. Do you have any understanding based either on
20 your personal knowledge or in your expertise as a CPA
21 and a CFO as to what that sentence means?

22 MR. MORRIS: Objection to the form of the
23 question.

24 THE WITNESS: The way that I would read that
25 would be that for a payment, for example, pick a date,

David Klos - October 27, 2021

1 Exhibit 14 again, the \$2.1 million payment on or about
2 June 19. I see that a payment was made.

3 And it was -- it appears that there was
4 accrued and unpaid interest at that time of 66,000. And
5 so the first 66,000 was applied to outstanding accrued
6 interest, to bring the balance to zero.

7 And the difference between that 66,000 and the
8 2.1 million was applied to principal.

9 Q. (BY MR. RUKAVINA) Do you believe, whether
10 from personal knowledge from this note, Exhibit 13, or
11 your experience at Highland or as a CPA, that one can
12 say that interest, accrued interest will be due on a
13 future date, it will accrue by that date, but I'm going
14 to pay it earlier as of that date?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: If I can rephrase back to you
18 just so I make sure I'm understanding the question.
19 You're saying could someone say, I would like to prepay
20 interest into the future. It hasn't accrued yet, but
21 it will be accrued by end of year.

22 And I would like to be prepaid effectively
23 with respect to that interest, and then have the
24 remainder used to pay down principal.

25 The question is, can someone do that?

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) Yes.

2 MR. MORRIS: I object to the question.

3 THE WITNESS: I suppose it's possible, but
4 that certainly wasn't the practice if that makes sense.

5 Q. (BY MR. RUKAVINA) That does make sense. I'm
6 still struggling, and again, I'm not trying to be a
7 smart aleck. I'm still struggling with the first
8 sentence of paragraph 3, that maker may prepay accrued
9 interest.

10 And it sounds like to me like you don't
11 necessarily have a definitive answer as to what that
12 might have meant either.

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: I think the document speaks for
16 itself in that sentence.

17 Q. (BY MR. RUKAVINA) But have you seen
18 something like this, to your recollection, in other
19 Highland promissory notes?

20 A. Something like what?

21 Q. Prepaying accrued interest.

22 A. Yes, I have seen that.

23 Q. What's your memory? Where have you seen
24 that?

25 A. I can't remember a specific note, but I

David Klos - October 27, 2021

1 believe that has been done in a specific circumstance.

2 Q. So at least at Highland, you would believe
3 that that phrase, prepaying accrued interest, had some
4 established meaning at Highland?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: No, I don't agree with that.

8 Q. (BY MR. RUKAVINA) Okay. You understand, of
9 course, that it's Highland's position that with respect
10 to this note, a payment was due on December 31 of 2020
11 that wasn't made; correct?

12 A. Yes, it's my understanding -- if I can state
13 it back just so I make sure I'm getting it correctly.
14 It's my understanding that there was a payment due on
15 December 31, 2020, that wasn't made timely, yes.

16 Q. Okay. Do you know why that payment wasn't
17 made timely?

18 A. By recollection, because Mr. Dondero had
19 directed people not to process payments from Highland
20 affiliates to Highland.

21 Q. When did you learn of that?

22 A. Early December 2020.

23 Q. How did you learn of that?

24 A. I don't specifically remember the
25 conversation, but I know I had conversations with both

David Klos - October 27, 2021

1 Kristin and Frank. I can't remember if those were
2 individual or collective, but we understood that to be
3 the marching orders.

4 Q. Did you hear Mr. Dondero say anything like
5 that?

6 A. I did not.

7 Q. Did Mr. Waterhouse tell you that Mr. Dondero
8 said something like that to him?

9 A. Yes.

10 Q. Okay. Separately, do you remember whether
11 Ms. Hendrix told you that Mr. Waterhouse told her that,
12 or would it have been kind of at the same meeting?

13 A. I don't remember specifically. It would have
14 been all around the same time.

15 Q. And to the best of your recollection, what
16 words -- strike that.

17 To the best of your recollection, did
18 Mr. Waterhouse include a reference to promissory notes
19 and the Advisors when he said that Dondero told him not
20 to make payments?

21 MR. MORRIS: Objection to the form of the
22 question.

23 THE WITNESS: I don't remember the specific
24 words that Mr. Waterhouse used. My clear impression
25 was that it was a very global instruction.

David Klos - October 27, 2021

1 And I should clarify also that, you know, at
2 this time, I think as we covered in my background.

3 At this point I had assumed the chief
4 accounting officer role, so I wasn't necessarily in
5 the -- in as much of the chain of command as I had been
6 previously to taking that role, where that sort of thing
7 might have come from Frank, to me, to Kristin.

8 By this time, Frank and Kristin were
9 communicating and I was sometimes in the loop, sometimes
10 not.

11 Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell
12 you why Dondero had told him that?

13 A. I don't remember with any specificity.
14 However, my perception at the time was that at this
15 time the relationship between Mr. Dondero and Mr. Seery
16 was hopelessly broken, and that this was Jim Dondero,
17 you know, gearing up for a fight in the future.

18 Q. Prior to December of 2020, had you prepared a
19 report showing potential overpayments that NexPoint and
20 HCMFA had made on account of shared services and
21 payroll reimbursement?

22 MR. MORRIS: Objection to the form of the
23 question.

24 You can answer.

25 THE WITNESS: I know the analysis that you're

David Klos - October 27, 2021

1 talking about. I would not characterize it the way
2 that you characterized it.

3 Q. (BY MR. RUKAVINA) And we'll talk about this
4 more in November, so I really don't want to go into any
5 detail, unless you feel the need to.

6 But, so you did not prepare that analysis?

7 MR. MORRIS: Objection to the form of the
8 question.

9 THE WITNESS: I prepared an analysis that
10 differed from how you described it.

11 Q. (BY MR. RUKAVINA) How would you describe it,
12 in a nutshell?

13 A. I would describe it as I was asked to refresh
14 a spreadsheet using certain assumptions, based on the
15 direction of Frank Waterhouse, and I updated and I sent
16 him an email.

17 Q. Do you have any understanding that that
18 analysis was then shared with Mr. Dondero by
19 Mr. Waterhouse?

20 A. I know that now. I didn't know that at the
21 time.

22 Q. Do you have any understanding -- strike that.

23 Did you have any understanding that as of
24 early December 2020 the reason why Mr. Dondero said
25 what he said to Mr. Waterhouse was because that

David Klos - October 27, 2021

1 analysis, right or wrong, suggested that the Advisors
2 had made large overpayments?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: No, that's incorrect.

6 Q. (BY MR. RUKAVINA) Why is that incorrect?

7 A. Because by recollection, to the best of my
8 recollection, that analysis didn't occur until after
9 Dondero had told Frank no more payments.

10 Q. Is that the only reason why you might suspect
11 that what I just said was incorrect?

12 MR. MORRIS: Objection to the form of the
13 question.

14 THE WITNESS: Yeah, I don't know how to
15 answer that.

16 Q. (BY MR. RUKAVINA) I'm going back, when I
17 asked you, did Waterhouse tell you why Dondero gave the
18 direction, you said no.

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: Sorry, I'm not sure. If I
22 could have the question asked again, I'd be happy to
23 answer.

24 Q. (BY MR. RUKAVINA) I'll ask it again.

25 Mr. Waterhouse tells you that Mr. Dondero

David Klos - October 27, 2021

1 basically said no more payments; right?

2 A. Yes.

3 Q. And, but he did not tell you why Mr. Dondero
4 said that?

5 A. Not that I can recall.

6 Q. So he might have?

7 A. He might have. I don't specifically
8 remember.

9 Q. Do you recall asking him or anyone else why
10 Dondero would have said that?

11 MR. MORRIS: Objection. Asked and answered.

12 THE WITNESS: I don't recall specifically
13 asking.

14 Q. (BY MR. RUKAVINA) Do you recall telling
15 Mr. Seery that Dondero said anything like that?

16 A. At what point in time?

17 Q. Prior to December 31, 2020.

18 A. No, I did not. I did not say that to
19 Mr. Seery.

20 Q. In your mind was there any present
21 understanding or concern that NexPoint therefore
22 wouldn't make a scheduled December 31, 2020, payment?

23 A. Was there any concern that they wouldn't?

24 Q. Yeah.

25 A. I would never use the word "concern." At

David Klos - October 27, 2021

1 that point I wasn't even on the team anymore, so I hate
2 to say it's other people's problem, but I had my hands
3 full with plenty of other things. It wasn't something
4 I was thinking about.

5 Q. Do you remember here today that prior to
6 December 31, 2020, you believed that NexPoint would not
7 make the scheduled payment?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: I had no idea whether NexPoint
11 was going to make the payment.

12 Q. (BY MR. RUKAVINA) Were you asked prior to
13 December 31, 2020 by Mr. Seery or anyone else as to
14 whether NexPoint was going to make that payment?

15 A. Was I asked by Mr. Seery? Not that I can
16 remember.

17 Q. Prior to December 31, 2020, do you recall any
18 discussion with Mr. Seery about the NexPoint note?

19 MR. MORRIS: I'm sorry, can I have the
20 question again.

21 Q. (BY MR. RUKAVINA) Prior to December 31,
22 2020, do you recall any discussion that you had with
23 Mr. Seery about this NexPoint note?

24 A. Not that I can remember. If there was, it
25 would have been in a cash meeting, but I don't remember

David Klos - October 27, 2021

1 at all.

2 Q. So it might have been some detail as part of
3 a larger discussion, but you don't remember any
4 specific discussion just around this note?

5 A. No.

6 Q. When did you learn or how did you learn that
7 the December 31 payment had not been made?

8 A. I'm not sure, but certainly after
9 December 31.

10 Q. Do you recall if it was before or after
11 January 7?

12 A. I think it was after.

13 Q. The default letter from Highland is in here,
14 if you need to see it. I'm just telling you it's the
15 January 7.

16 Do you recall having any role with respect to
17 drafting the default letter that went out to NexPoint
18 after the failed payment?

19 A. No, none that I can remember.

20 Q. How do you recall learning that the note had
21 been called by Highland?

22 A. I honestly don't remember. I think after the
23 fact. I couldn't tell you how far after the fact.

24 Q. Are you aware that on or about July -- I'm
25 sorry, January 14, 2021 NexPoint made a \$1.4 million

David Klos - October 27, 2021

1 and change payment?

2 A. Yeah, I'm aware that that payment happened.

3 Q. When did you become aware of that payment?

4 A. I think after it happened.

5 Q. Can you tell us, was it days, weeks, months
6 later?

7 A. It was that day. And if I can expand, I
8 recall getting an email, seeing a large inflow to
9 Highland, to MLP because I was on an email distribution
10 list that had those payments.

11 And I think I emailed or called Kristin and
12 asked her, is this the NexPoint note, because it was a
13 large amount of money. And she said yes.

14 Q. Did she tell you anything more about that
15 payment, when it had been made, why, who authorized it?

16 A. I had that information of when it had been
17 sent. I had a wire confirm.

18 Q. Only important thing to you is where did that
19 money come from?

20 A. It wasn't important to me. It was more
21 curiosity.

22 Q. Did you have any discussions with anyone on
23 or about that time, January 14, 2021, as to why
24 NexPoint made that payment?

25 A. Not that I can remember.

David Klos - October 27, 2021

1 Q. Did you have any discussion with anybody on
2 or about that time, January 14, 2021, as to how HCMLP
3 should account for that payment?

4 A. No.

5 Q. Did you have any discussion with Mr. Seery at
6 all about whether that payment should or shouldn't
7 reinstate the note?

8 A. No discussion that I can remember.

9 Q. Is it fair to say that any of those
10 considerations would have been at that point in time
11 above your paygrade?

12 MR. MORRIS: Objection to the form of the
13 question.

14 THE WITNESS: Yeah, paygrade, I don't know
15 how to respond to that. Like I said before, I wasn't
16 on the team at that point. I wouldn't have been
17 involved in that determination regardless of my
18 compensation.

19 Q. (BY MR. RUKAVINA) So you know and you
20 remember that in early December 2020 Frank Waterhouse
21 told you that Dondero had directed no more payments by
22 the Advisors. And you know that a payment was made on
23 January 14.

24 And that's pretty much the extent of your
25 knowledge about the missed December 31 payment?

David Klos - October 27, 2021

1 MR. MORRIS: Objection to the form of the
2 question.

3 THE WITNESS: Yeah, it's a very broad
4 question. In general terms, yes.

5 Q. (BY MR. RUKAVINA) Well, I'm not asking what
6 you learned since then.

7 I'm asking that as of, let's say, January 15,
8 2021 that would have been the extent of what you would
9 have known?

10 A. Correct. And if I can just restate and make
11 sure I understand what I'm saying.

12 It would have been my understanding that we
13 had had an instruction -- when I say "we," Kristin and
14 Frank and by default the whole corporate team -- not to
15 make payments from these affiliated entities.

16 To my knowledge, none of those payments had
17 occurred since that point. And then on or about
18 January 14, such a payment was made and I found out
19 about that by seeing a wire confirm.

20 Q. Well, you mentioned a couple times that you,
21 in December 2020, you weren't part of that group
22 anymore. So do you have any understanding as to why
23 Mr. Waterhouse would have told you in particular, you
24 being Mr. Klos, about that instruction from Dondero?

25 A. Sure. I still was participating in cash

David Klos - October 27, 2021

1 meetings, even if it was almost in a nominal role,
2 because of some of my history that I had. So I was
3 still participating in those meetings.

4 I've worked closely with Kristin for a long
5 time, so I may have caught up with her informally. But
6 as far as day-to-day duties, I wasn't part of that team
7 anymore.

8 Q. And is it your, did I understand you
9 correctly, is it your testimony that Mr. Waterhouse
10 informed the whole accounting group there, the
11 corporate accounting group, of Mr. Dondero's
12 instruction?

13 A. I don't know specifically who he told, if he
14 told every single member of the team, but he certainly
15 told Kristin and Kristin was the head of the team.

16 Q. And you don't recall anyone, after you heard
17 about that instruction, raising any concern to the
18 effect that NexPoint is going to default and be in
19 trouble if that payment isn't made?

20 A. I don't remember any discussion to that
21 effect.

22 Q. Do you remember anyone suggesting that they
23 ought to try to dissuade Mr. Dondero from that
24 direction?

25 A. Not that I can remember.

David Klos - October 27, 2021

1 Q. Do you remember any discussion at that
2 approximate point in time for your cash meetings or
3 anything else as to whether NexPoint had made any
4 prepayments on the promissory note?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: Yeah, it's very hard to -- by
8 the way, I've said yeah a few times. I want to make
9 clear that that's just --

10 Q. (BY MR. RUKAVINA) That's not a yes?

11 A. I apologize for that.

12 Q. Understood. Yeah means, it's not a yes.

13 MR. MORRIS: It's a pause; it's an um.

14 Q. (BY MR. RUKAVINA) Germans call it flavoring
15 particle.

16 A. Sorry, I got lost there. If you can ask
17 again.

18 Q. Yeah. Do you recall in November or
19 December 2020 in your weekly meetings or anything else,
20 any discussion whatsoever concerning whether NexPoint
21 had made any prepayments on its note?

22 A. No discussions of whether or not there had
23 been a prepayment that I can remember, no.

24 Q. To the best of your knowledge sitting here
25 today -- strike that.

David Klos - October 27, 2021

1 For my next question, again we're assuming
2 that Exhibit 14 is what it appears to be.

3 A. Sure, sure.

4 Q. So with that qualification, to the best of
5 your knowledge, other than what's on Exhibit 14, can
6 you think of any other record or source or document
7 that would address whether any unscheduled payments by
8 NexPoint would or wouldn't be prepayments on the note?

9 MR. MORRIS: Objection to the form of the
10 question.

11 THE WITNESS: Again, with the struggle of the
12 prepayment, this is the document that I would expect to
13 explain how the payment was applied.

14 Q. (BY MR. RUKAVINA) But you yourself did not
15 play any role in deciding how the payment would be
16 applied?

17 A. I'd hesitate to say no role, because the team
18 ultimately rolls up to me.

19 Q. You personally?

20 A. Me personally, I wouldn't have prepared these
21 schedules.

22 Q. Or decided, you personally, as Mr. Klos, how
23 any unscheduled payments should be accounted for by
24 Highland?

25 A. Correct, not without some -- some

David Klos - October 27, 2021

1 authoritative direction on how they should be applied.

2 Q. And that authoritative direction would have
3 come from Mr. Waterhouse or Mr. Dondero?

4 A. That's what I would expect.

5 Q. Could it have come from anyone else that you
6 can think of here today?

7 A. Not that I can think of.

8 Q. Now we're going to switch gears and I think
9 we're going to stop discussing the NexPoint note, and
10 we're going to focus on the HCMFA two promissory notes.

11 A. Sure.

12 Q. So we're going to go back in time to
13 May 2019; okay?

14 A. Sure.

15 Q. And is it fair to say by -- that by May 2019
16 there were at least dozens if not hundreds of instances
17 of intercompany loans in the years leading up there
18 from Highland to one of the other entities?

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: From Highland to one of the
22 other entities. Can you help with other entities.

23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any
24 of the Dondero entities?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 THE WITNESS: Yes, there would have been many
3 loans over the years.

4 Q. (BY MR. RUKAVINA) And do I understand that
5 most, if not all, of those loans should have been
6 papered up with a written promissory note?

7 MR. MORRIS: Objection to the form of the
8 question.

9 THE WITNESS: Should have been. To the
10 extent that they were for a promissory note, then yes.

11 Q. (BY MR. RUKAVINA) So in the May 2019 time
12 frame, was there a regular pattern or course or
13 procedure in place as to how a promissory note would be
14 physically prepared and presented for approval?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: Yeah, when you say a process,
18 can you please clarify that for me.

19 Q. (BY MR. RUKAVINA) Sure. Let's look at these
20 two promissory notes and maybe that will help frame the
21 question. And I apologize for not having them right
22 here.

23 A. It might be --

24 MR. MORRIS: 1 and 2.

25 MR. RUKAVINA: Yes.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) Are you familiar with
2 Exhibits 1 and 2, sir?

3 A. Yes, I am.

4 Q. Do you remember them from back -- strike
5 that.

6 Did you have any role, to your knowledge,
7 with the preparation of Exhibits 1 and/or 2?

8 A. With the preparation of the documents?

9 Q. Yeah.

10 A. No.

11 Q. But you did have some role with these
12 promissory notes?

13 A. Yes.

14 Q. And I'm trying to find that email as well.
15 There's an email here from you. I'll have it in a
16 moment. That will help frame the question.

17 MR. MORRIS: Exhibit 3.

18 Q. (BY MR. RUKAVINA) Do you recall that email,
19 sir?

20 A. Not specifically, but it's right in front of
21 me. I'm certain that I wrote this email.

22 Q. You have no reason to deny or reject its
23 authenticity?

24 A. I have no reason to reject it or question it.

25 Q. Just give me a second. I don't understand

David Klos - October 27, 2021

1 what's going on with my exhibits. I just don't
2 understand this.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in
5 front of you?

6 A. I do.

7 Q. And it says, please send 2.4 million from
8 HCMLP to HCMFA. This is a new interco.

9 Meaning intercompany; right?

10 A. Correct.

11 Q. This is a new intercompany loan.
12 Who told you that this was an intercompany
13 loan?

14 A. Either Frank or Jim. I would suspect Frank.

15 Q. Do you have any present memory of him telling
16 you that with respect to this particular loan?

17 A. I don't have a specific recollection, but
18 with a hundred percent certainty he or Jim would have
19 directed that.

20 Q. Would they have directed the payment, or
21 would they have directed that it be papered as a loan,
22 or both?

23 A. Both.

24 Q. So in each instance -- well, let's take a
25 step back.

David Klos - October 27, 2021

1 So certainly either Jim or Frank directed you
2 to transfer the \$2.4 million; correct?

3 A. Either Jim or Frank would have directed, yes.
4 There's 0 percent chance I would have sent this email
5 if I didn't feel a hundred percent confident that this
6 was authorized in the way that I described in the
7 email.

8 Q. But can you also say with certainty that
9 either Dondero or Waterhouse also told you that this
10 transfer is an intercompany loan?

11 A. With a hundred percent certainty, yes. I
12 can't say that necessarily with respect to Dondero,
13 because I don't remember if I would have talked to him
14 specifically about it. But, yes, this would have been
15 clear that it's a loan.

16 Q. You say clear. Did someone tell you that
17 it's a loan, or are you just, because of the prior
18 10 years of course and conduct, logically deciding that
19 it has to be a loan?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: So this is -- this is not just
23 a situation of past practice. I would have known with
24 certainty that this was a loan and that's what was
25 authorized.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) How would you have known
2 with certainty that it was a loan?

3 A. I'll say in part because of past practice,
4 but also because of the nature of what the money was
5 going to be used for, and the background behind it.

6 Q. So you knew that nature and that background?

7 A. The nature and background of the 2.4 million,
8 yes.

9 Q. So you've told me that in part -- I asked you
10 how did you know it was a loan. You said in part past
11 practices, in part you knew the nature. Anything else?

12 A. I'm certain that given that I wrote this
13 email, which Frank is on, that I would have had a
14 conversation with Frank about what this was.

15 Q. Was Jim Dondero in the corporate accounting
16 email?

17 A. No, he wasn't.

18 Q. So what is your understanding as to what this
19 \$2.4 million was for?

20 A. This related to -- well, to separate the
21 transaction, the 2.4- itself relates to a promissory
22 note. That's what was executed.

23 HCMFA's use of the 2.4 million was to
24 reimburse a fund that it managed called Highland Global
25 Allocation Fund for a NAV error that had occurred

David Klos - October 27, 2021

1 within that fund.

2 Q. Who made that NAV error?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: Yeah, it's hard to answer that.
6 So the Highland Capital Management Fund Advisors is the
7 advisor to the fund, so they're the responsible party
8 for making the fund whole in the instances of NAV
9 errors.

10 Q. (BY MR. RUKAVINA) And did HCMFA contract out
11 with Highland for valuation services?

12 MR. MORRIS: Objection to the form of the
13 question.

14 THE WITNESS: I don't specifically remember
15 if they contracted for valuation services, but if you
16 tell me that they did, I'll take that at face value.
17 So yes, HCMFA utilized HCMLP for valuation services.

18 Q. (BY MR. RUKAVINA) Do you have any memory of
19 what human being or beings made that NAV error?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: It's -- in respect to people,
23 not particularly. In respect to parties, Houlihan
24 Lokey was the service provider that performed the
25 valuation that resulted in the NAV error.

David Klos - October 27, 2021

1 And as I described before, the valuation
2 function was housed at HCMLP by HCMLP employees
3 supporting that through, among other people, front
4 office, compliance, other parts of the organization as
5 well.

6 Q. (BY MR. RUKAVINA) So it was your
7 understanding that Highland was loaning \$2.4 million to
8 HCMFA for HCMFA to compensate that fund?

9 A. Yes.

10 Q. Did you have any understanding that Highland
11 might have been, instead of loaning that money,
12 actually paying that money to HCMFA to compensate HCMFA
13 for Highland's valuation error?

14 A. First, not Highland's valuation error. But
15 second, no, there's no way that that would have been
16 what that payment was for.

17 Q. Why can you say that there's no way that that
18 would have been what that payment was for?

19 A. First, this wasn't the first NAV error that
20 ever occurred. There had been other NAV errors. There
21 were other NAV errors with respect to this valuation
22 that pertain to NexPoint Advisors.

23 There was no reimbursement from HCMLP to
24 NexPoint or HCMFA, regardless of any individual being
25 identified as the person. That had just never occurred

David Klos - October 27, 2021

1 to my knowledge.

2 Second, the amount was to meet the liquidity
3 need of HCMFA. It wasn't to -- it wasn't to
4 dollar-for-dollar make up for the NAV error. It was
5 that's how much money HCMFA needed.

6 Third, it was definitely Dondero's practice
7 and preference to have expenses at HCMFA for tax
8 purposes. So if this was compensation, he would
9 ultimately not really be benefiting from the deduction
10 so.

11 That would have been a strong preference of
12 his against having it be compensation.

13 So it would have been excruciatingly clear
14 that this was a loan for liquidity for HCMFA to make
15 the fund whole, just like it had in the past NAV
16 errors.

17 Q. How did you know that HCMFA needed
18 \$2.4 million for liquidity?

19 A. At that point I was still part of the
20 corporate team, so I had a good sense of how much cash
21 HCMFA would have had at any given moment. And at that
22 given moment it would not have had -- I'd be shocked if
23 it had even 2.4-.

24 Probably would have had probably between
25 a million and 2 million if I had to speculate.

David Klos - October 27, 2021

1 Q. Okay. So you've given the reasons why this
2 was clearly a loan.

3 But you never heard Mr. Dondero say that this
4 was a loan, did you?

5 A. I don't remember. It's possible I did, but I
6 don't specifically remember.

7 Q. Okay. What about the \$5 million loan on the
8 day after? What was that \$5 million for?

9 A. That was similar but different. So again,
10 HCMFA needed liquidity. This time this was for --
11 related to that same fund.

12 So Highland Global Allocation Fund had
13 converted from an open-end fund, mutual fund, to a
14 closed-end mutual fund.

15 And pursuant to that conversion there was a,
16 I believe it was called a consent fee, for any
17 investors of that fund who consented to the conversion,
18 that they would receive a 3 percent fee payable by the
19 investment advisor.

20 And so at this time the bill came due on that
21 because the conversion had been completed, and the
22 accounting for how much that 3 percent was going to be
23 was complete.

24 HCMFA sure as hell didn't have 5 million
25 bucks. Excuse my language. Highland needed to pay

David Klos - October 27, 2021

1 HCMFA for the liquidity. HCMFA made the payment to the
2 fund. It wasn't dollar for dollar. I think it was
3 like 5,019,000, or some such number.

4 But 5 million was the number that would allow
5 it to make that payment effectively to the investors of
6 Global Allocation Fund.

7 Q. Do you have any understanding as to why
8 Highland, as opposed to some other entity, was
9 transferring \$7.4 million?

10 A. Highland as opposed to some other entity?

11 Q. Uh-huh.

12 A. Because Highland had the money.

13 Q. But I think we've established earlier that in
14 the first seven months of 2019, Highland was having
15 constant liquidity issues?

16 A. It was.

17 Q. And that's part of the reason that NexPoint
18 was making unscheduled payments on its note; right?

19 A. That's part of the reason NexPoint was making
20 unscheduled payments on its note, yes.

21 Q. So your recollection is that HCMFA needed
22 \$2.4 million for liquidity purposes and about
23 \$5 million for the consent fee. And Highland
24 transferred those funds because Highland had the funds?

25 A. Yes. And I should clarify that Highland only

David Klos - October 27, 2021

1 had the funds because Mr. Dondero repaid personal notes
2 to HCMLP on the same days.

3 So he paid 2.4 million on May 2, which
4 Highland turned around and reloaned. And he paid 4.4-
5 on May 3, and Highland sent out 5-, so there's a
6 \$600,000 difference. And my recollection, he paid the
7 other 600,000 via note repayment within a few days.

8 Q. So this would have been part of some broader
9 transaction in Mr. Dondero's mind?

10 A. I would not characterize it that way.

11 Q. You established that HCMFA needed money. You
12 established that Highland temporarily had money because
13 Dondero provided it with money.

14 But you still don't know, sir, as a fact as
15 to whether that transfer was a loan or some other
16 payment from HCMFA -- I'm sorry from HCM, from debtor
17 to HCMFA?

18 MR. MORRIS: Objection to the form of the
19 question. Asked and answered a million times. It's in
20 the documents you're showing him.

21 THE WITNESS: It was a loan.

22 MR. MORRIS: Come on, Davor. With all due
23 respect, it's in the document. It's on the document.

24 Q. (BY MR. RUKAVINA) I'm being courteous and
25 respectful to you and I'd ask the same in return; okay?

David Klos - October 27, 2021

1 A. Absolutely. I apologize if I haven't been.

2 Q. Mr. Dondero, would you agree, was the only
3 person that had the authority at the debtor to
4 authorize a transfer of 2.4- and then \$5 million?

5 A. At the debtor?

6 MR. MORRIS: Objection to the form of the
7 question.

8 Q. (BY MR. RUKAVINA) Yes, at the debtor.

9 A. No.

10 Q. Who else could have transferred 2.4 million
11 or \$5 million?

12 A. Those are two different questions. But if
13 you're asking who had the authority, certainly Frank
14 did as well.

15 Q. So Frank had the authority. Perhaps my
16 question was inartful.

17 Do you believe that Mr. Waterhouse would have
18 decided to transfer \$2.4 million or \$5 million without
19 Mr. Dondero's approval?

20 MR. MORRIS: Objection to the form of the
21 question.

22 THE WITNESS: Generally speaking, no, but I
23 don't know exactly what the form of the approval. But
24 he certainly wouldn't have done that on his own without
25 discussing with Dondero.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) Do you believe that
2 Mr. Waterhouse had the ability on behalf of the debtor
3 to loan \$5 million without Mr. Dondero's approval?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: I think he had the technical
7 authority to. However, I don't believe in practice
8 that he ever would.

9 Q. (BY MR. RUKAVINA) Same question, \$2.4
10 million?

11 A. Same answer.

12 Q. We've established that you never really had a
13 direct employment or types of a role for NexPoint --
14 I'm sorry, for HCMFA; right?

15 A. Again --

16 Q. To the best of your recollection?

17 A. Best of my recollection I can't remember how
18 the titles transferred over or whatever, but I don't
19 believe I did.

20 Q. Do you know whether Mr. Waterhouse in 2019
21 had the authority, without Mr. Dondero's approval, to
22 borrow \$7.4 million on behalf of HCMFA?

23 MR. MORRIS: Objection to the form of the
24 question.

25 THE WITNESS: He had the authority to enter

David Klos - October 27, 2021

1 into the note on behalf of HCMFA, yes.

2 Q. (BY MR. RUKAVINA) Was that something that he
3 would have done without Mr. Dondero's approval to your
4 understanding and practice at that time?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: Same answer that I gave before
8 with respect to Highland.

9 Q. (BY MR. RUKAVINA) So here's where I'm going
10 with all this.

11 Mr. Dondero's position, and tomorrow his
12 testimony will be, that he caused the \$7.4 million to
13 be transferred not as a loan to HCMFA, but to
14 compensate HCMFA for various things including that NAV
15 error.

16 Other than perhaps you think he's lying,
17 would you have any knowledge, hearsay, document,
18 anything, to contradict Mr. Dondero's position?

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: Yes. I would point to the fact
22 that as it pertains to the \$5 million note, if we're
23 separating issues, there's no other possibility of what
24 that money could be other than either a loan or equity.

25 It's not compensation. Highland is under --

David Klos - October 27, 2021

1 HCMLP has absolutely zero obligation in respect to that
2 consent fee. So when Highland sends \$5 million to HCMFA
3 there's nothing else that it can be. That's Point 1.

4 Point 2, we're right in the middle of an audit
5 at this point. Jim signs rep letters at this point.
6 He's being provided balance sheets throughout 2019 that
7 indicate the loans that Highland has on its books.

8 Balance sheets are being prepared in respect
9 of annual approvals for 15(c) for retail funds in the
10 fall. Schedules are being created for bankruptcy after
11 we file in October.

12 Nobody says this is a mistake. Frank is on
13 all of these emails. Frank never questions it.

14 There's absolutely no evidence from that point
15 in time to whenever this defense got raised that would
16 indicate that anybody said that these weren't exactly
17 what they say they are.

18 Q. (BY MR. RUKAVINA) Are you aware that in
19 February or March 2019 some \$5.2 million was paid from
20 insurance that HCMFA had to the fund for the NAV error?

21 A. The amount sounds unfamiliar, but I'm aware
22 that insurance proceeds were paid from HCMFA to the
23 fund.

24 Q. And do you think that it's impossible for a
25 sane, rational person to conclude that HCMFA had a

David Klos - October 27, 2021

1 claim against the debtor related to that NAV error?

2 MR. MORRIS: Objection to the form of the
3 question.

4 THE WITNESS: If it did, I don't know how
5 that's not insurance fraud for basically double
6 collecting insurance proceeds and then collecting it
7 again.

8 Q. (BY MR. RUKAVINA) So you believe, sir, that
9 if insurance pays a claim you have no more right to go
10 against a person who caused the fault?

11 MR. MORRIS: Objection to the form of the
12 question.

13 THE WITNESS: We can speak specifically here.
14 This is about a NAV error that an insurance company
15 reimbursed HCMFA for, which it then turned around and
16 paid for the fund.

17 So if it went to collect that same, let's use
18 round numbers, \$5 million from Highland that it's
19 already collected from insurance, that sounds
20 inappropriate to me.

21 Q. (BY MR. RUKAVINA) Okay. But you don't know
22 whether that's allowed in Texas law or not, do you?

23 MR. MORRIS: Objection to the form of the
24 question.

25 THE WITNESS: No, I don't know whether it's

David Klos - October 27, 2021

1 allowed under Texas law.

2 Q. (BY MR. RUKAVINA) So you don't know that if
3 you're hit by someone on the street and your medical
4 insurance pays your bills, you don't know that he still
5 has to pay you for the same bills?

6 MR. MORRIS: Objection to the form of the
7 question. I hope I don't miss my plane.

8 Q. (BY MR. RUKAVINA) You don't know that under
9 Texas law if someone hits you with their car and causes
10 you medical bills and your medical insurance pays those
11 bills, that you can still sue them for the same
12 damages?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: I'm not familiar at any level
16 of specificity with Texas law.

17 Q. (BY MR. RUKAVINA) Again, it just sounds
18 wrong to you that you could go after someone after
19 insurance pays, but you don't know legally one way or
20 the other?

21 A. Correct. I'm not a lawyer or expert in Texas
22 law. It feels wrong, yes.

23 Q. Okay. Going back to this email of yours,
24 Exhibit 3, do you recall whether there was a similar
25 email with respect to the \$5 million note?

David Klos - October 27, 2021

1 A. Yes, I am. I believe Kristin sent that one.

2 Q. Kristin sent that one?

3 A. I believe so.

4 Q. To whom?

5 A. Likely the same distribution group, but
6 that's speculation.

7 Q. Did you see such an email in the last week or
8 two?

9 A. I'm not certain, but probably. I have seen
10 email communication on or around May 3, but I don't
11 know specifically who all was on the email. I'm going
12 off what I would expect to see.

13 MR. MORRIS: If you're really interested,
14 it's right here. It was produced to you with
15 Bates 3763. And if you'd like to question the witness.

16 MR. RUKAVINA: When was it produced?

17 MR. MORRIS: I can't tell you. It's part of
18 the same package.

19 Q. (BY MR. RUKAVINA) So going back to this
20 Exhibit 3, sir, why did you ask Kristin, can you or
21 Hayley please prep a note for execution? Why them?

22 Remember, I was asking about what the course
23 or procedure was at that point in time.

24 A. Yeah, so nomenclature, procedure, process.

25 I would say the informal process for these

David Klos - October 27, 2021

1 types of loans, they were frequent in nature, would be
2 for someone on the corporate accounting team to prepare
3 a note and have it executed.

4 Q. Okay. That was the standard course back
5 then?

6 A. Again, I don't know what standard course
7 means. That was fairly typical.

8 Q. Why would you not have asked someone in the
9 Highland legal department to prepare a note?

10 A. Because this was a legally reviewed document
11 as far as the form of the agreement. It's a one-page,
12 two-paragraph form that had been used for a long time.

13 So the only thing that would change with
14 respect to these notes would be the date, the amount,
15 likely the rate. I can't think of anything else
16 offhand that would have changed from note to note.

17 Q. After you asked Ms. Hendrix to prepare this
18 note, did you have any further role with respect to the
19 papering, preparation, or execution of that note?

20 A. Not that I can remember.

21 Q. Would you have had any role in having either
22 or both of the notes actually signed electronically or
23 by ink by Mr. Waterhouse?

24 A. Likely not, no.

25 Q. Do you know who decided to have

David Klos - October 27, 2021

1 Mr. Waterhouse as opposed to Mr. Dondero sign these two
2 promissory notes?

3 A. I don't.

4 Q. On the \$5 million note, do you remember if
5 you had any role with respect to its physical papering
6 or execution?

7 A. Not that I recall.

8 Q. To the best of your memory, your role would
9 have been done by instructing your team, hey, here is
10 these new loans, go paper it up; is that accurate?

11 A. On the upfront side. I suppose my role would
12 have also included on the back end making sure that the
13 actual payment had occurred. But that would have been
14 doing that realtime, seeing the funds went out, and
15 that, most importantly, that the consent fee had been
16 paid from HCMFA to the transfer agent.

17 Q. How did you or anyone on your team know -- so
18 obviously, you know it's a \$2.4 million loan because
19 that's what Waterhouse or Dondero told you; right?

20 How did you know it was a \$2.4 million loan?

21 MR. MORRIS: Objection. Asked and answered.

22 THE WITNESS: I knew that the NAV error was
23 2 million, I think it was 398,000, somewhere in that
24 ballpark. And that 2.4- had been authorized for that
25 purpose.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) Do you know who decided
2 what the interest rate in this note would be, or that
3 it would be a demand note as opposed to a term note?

4 A. I don't specifically know who made that
5 decision. However, the common practice for fund
6 advisors was to put -- was for the rate to equal the, I
7 forget if it was the short-term or long-term AFR.

8 And for the note to be demand, that was just
9 the standard -- that was the standard.

10 Q. And I think I asked this, but just if I
11 didn't.

12 For either or both of these two notes, the
13 2.4- and \$5 million note, did you have any role with
14 respect to Mr. Waterhouse signing them?

15 A. No, not that I can remember. I don't think I
16 did.

17 Q. And you don't remember doing anything to get
18 his signatures?

19 A. Not that I recall.

20 Q. Nor would that have been something that you
21 would expect that you would have a role with?

22 A. Certainly not in this instance. Maybe to the
23 extent that nobody else was around and it was time
24 sensitive, but that wouldn't have been the case with
25 these, I don't believe.

David Klos - October 27, 2021

1 Q. Did you have any understanding in early May
2 of 2019 as to whether HCMFA was solvent or insolvent?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: Whether HCMFA was solvent or
6 insolvent? I'm not a solvency expert, so I don't know
7 that I could even attempt to answer that.

8 Q. (BY MR. RUKAVINA) Did you have an
9 understanding as far as HCMFA goes on May 2, 2019, that
10 its liabilities exceeded its assets?

11 A. I don't remember specifically where it stood
12 on assets versus liabilities.

13 Q. Do you have any memory that by May 2, 2019,
14 the debtor had taken a couple prior demand notes from
15 HCMFA and made them not collectible prior to May 31,
16 2021?

17 A. I know what you're referring to. I wouldn't
18 characterize it that way.

19 Q. How would you characterize it?

20 A. I recall that there was a financial support
21 acknowledgment, I think it was the name of the
22 acknowledgment.

23 That described -- I can't remember if it
24 described those two notes specifically or just referred
25 to them, that there would not be collection sought on

David Klos - October 27, 2021

1 those until May 31 of 2021.

2 Q. Do you remember why that document was done?

3 A. My recollection, and it could have been done
4 for other reasons, but my recollection of it was that
5 it was primarily audit-driven.

6 For the auditors to be comfortable that these
7 notes weren't going to be just called and FA not have
8 the ability to pay them right away.

9 Q. Because it's true in April or May of 2019
10 HCMFA didn't have the ability to pay those notes;
11 correct?

12 A. It didn't have enough cash to pay those.

13 Q. And I think you mentioned before that in
14 May 2019 the auditors at the Highland level were
15 talking about rolling up prior demand notes into term
16 notes so the debtor would at least get some regular
17 cash flow; correct?

18 MR. MORRIS: Objection to the form of the
19 question.

20 THE WITNESS: No.

21 Q. (BY MR. RUKAVINA) So you recall that -- I'm
22 sorry, that was 2017. I was wrong; right?

23 A. Correct.

24 Q. So I guess here is my question, and I'm
25 struggling to understand this.

David Klos - October 27, 2021

1 So why would Highland be loaning an
2 additional \$7.4 million in early May of 2019 to HCMFA
3 when HCMFA already was then unable to repay its debts
4 to Highland?

5 MR. MORRIS: Objection to the form of the
6 question.

7 THE WITNESS: Yeah, I kind of reject the
8 premise of the question, and these are all controlled
9 by Jim. And it's completely within his power at any
10 point in time to make any payment on any of the loans,
11 depending on where priorities sit.

12 So the idea that HCMFA -- that Highland would
13 be doing a credit analysis on HCMFA, determining that it
14 was unable to make that payment and, therefore, this is
15 a bad note, is a completely foreign, preposterous
16 concept at that time.

17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't
18 it also, sir, the case that Mr. Dondero could have,
19 right or wrong, agree or disagree, said, that 7.4- is
20 going to compensate HCMFA for the NAV error as opposed
21 to being a loan?

22 A. No.

23 Q. That's not possible?

24 A. No.

25 Q. And why is that not possible?

David Klos - October 27, 2021

1 A. As we discussed, the 5-, there's absolutely
2 no construct where that can be compensation for an NAV
3 error. It's not a NAV error. It's a consent fee.
4 Highland has absolutely no responsibility for that.

5 Highland also has no responsibility for the
6 2.4-, but if you want to assume that it did, that's
7 completely not the practice. It was Jim's preference
8 to do these via loans, and that's how it was booked.

9 Q. You're saying on the one hand Mr. Dondero can
10 absolutely control that one entity make a loan to
11 another, irrespective of credit worthiness, but he
12 can't decide that a transfer is compensation as opposed
13 to a loan?

14 MR. MORRIS: Objection to the form of the
15 question. Argumentative.

16 THE WITNESS: If he wants to call
17 \$7.4 million compensation to himself or to HCMFA, I
18 just don't know how he does that. This is me being an
19 accountant. I don't know how that's possible.

20 If he wants to pay himself a \$7.4 million
21 bonus from HCMFA, fine, he has the power to do that. If
22 he wants Highland to inject 7.4 million of equity into
23 HCMFA, he has the power to do that.

24 But sending the 7.4 million and calling it
25 something else, I don't know how he could do that.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) So it had to have been a
2 loan; correct?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: In these instances I know it to
6 have been a loan.

7 Q. (BY MR. RUKAVINA) Because of what
8 Mr. Waterhouse told you?

9 MR. MORRIS: Objection to the form of the
10 question. Asked and answered.

11 THE WITNESS: Yeah, it was my understanding
12 that these were loans.

13 Q. (BY MR. RUKAVINA) You know these 7.4- to be
14 loans even though you never heard Mr. Dondero say that
15 to you?

16 A. Yes, although to be fair, I don't know
17 whether I ever heard Mr. Dondero. It's possible he did
18 say it.

19 MR. MORRIS: Objection. Withdrawn.

20 Q. (BY MR. RUKAVINA) You have no memory that on
21 or before May 4, 2019 you heard Mr. Dondero say that
22 the \$2.4 million transfer and/or the \$5 million
23 transfer to HCMFA were loans?

24 A. I have no specific recollection, but such a
25 conversation is just off the reservation impossible.

David Klos - October 27, 2021

1 That there's no way -- there's no way -- there's no way
2 that it would have been described that way and there's
3 a hundred percent that it's loan.

4 Q. Do you have any memory discussing prior --

5 MR. MORRIS: Objection. Asked and answered.
6 He's answered this a thousand times.

7 Q. (BY MR. RUKAVINA) Do you have any memory on
8 or before May 2, 2019 discussing the \$2.4 million
9 transfer with Mr. Dondero at all?

10 A. I do recall, I don't remember the time, but I
11 do remember discussing the NAV error in general terms
12 and the potential magnitude of that. I don't remember
13 specifically when that occurred.

14 Q. At least in your discussion with Mr. Dondero,
15 the \$2.4 million loan or note was somehow linked to the
16 NAV error?

17 A. Linked to the NAV error is strong. It
18 related to the NAV error from the standpoint that
19 that's what Highland was loaning HCMFA the money for,
20 because HCMFA couldn't otherwise make the payment
21 itself.

22 Q. You just said Highland was loaning the money
23 for. Are you remembering now Mr. Dondero saying that
24 or are you just extrapolating?

25 A. No, I'm explaining rationally what the

David Klos - October 27, 2021

1 situation was.

2 Q. Do you remember on or before May 3, 2019
3 discussing the \$5 million transfer with Mr. Dondero?

4 A. Again, in general terms. I couldn't tell you
5 a time period, but this was something that, between
6 Frank and I, we had put on Jim's radar that this would
7 be a cash need in the future. I couldn't specify
8 specifically when that happened.

9 Q. Okay. You have no present memory of
10 discussing that issue with Mr. Dondero on or before
11 May 3, 2019? It must have happened but you have no
12 memory?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: We discussed that there would
16 be a consent fee payable from HCMFA. We would have
17 discussed -- and again, I don't remember where I was,
18 what day it was, the specifics around the conversation.

19 But I know that we had conversations
20 pertaining to cash, because this was a large need for --
21 cash need for HCMFA to satisfy this, and this was an
22 important payment.

23 And neither HCMFA nor Highland had the
24 wherewithal to make that payment. The only way that
25 those could make the payment was by Jim Dondero repaying

David Klos - October 27, 2021

1 loans that he owed to HCMLP. So we absolutely discussed
2 that with Jim Dondero.

3 Q. (BY MR. RUKAVINA) And with respect to
4 everything that we just talked about and your
5 recollection, you still don't remember Mr. Dondero
6 saying to you or Mr. Waterhouse one way or the other
7 that one or both of these transfers were loans?

8 MR. MORRIS: Objection to the form of the
9 question. Asked and answered.

10 THE WITNESS: Yeah, again --

11 Q. (BY MR. RUKAVINA) Just yes or no. This is a
12 yes-or-no question.

13 MR. MORRIS: Let him answer the question.

14 MR. RUKAVINA: If he'll answer the question
15 I'll stop asking him --

16 MR. MORRIS: He's allowed --

17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,
18 do you remember --

19 A. I don't remember Jim's exact words two and a
20 half years ago in respect to authorizing these
21 payments. So to answer your question, no, I don't
22 specifically remember him saying these are loans.

23 But every other fact around this tells me
24 that we did have that conversation and that was the
25 conclusion and that was the direction.

David Klos - October 27, 2021

1 Q. So it's possible that Mr. Dondero told no one
2 that these were loans but because y'all have been doing
3 it this way for 10 years, that everyone, all of you
4 CPAs, understood that it had to be a loan?

5 MR. MORRIS: Objection to the form of the
6 question.

7 Q. (BY MR. RUKAVINA) My question is, is that
8 possible?

9 A. I really don't think it's possible. I
10 suppose people say anything is possible. Again, two
11 and a half years ago, I'm certain that that was the
12 intent at the time and I'm sure it was communicated as
13 such. I just don't have a specific recollection.

14 MR. RUKAVINA: Thank you.

15 I'll pass the witness.

16 MR. MORRIS: Michael, do you have any
17 questions?

18 MR. AIGEN: I do. I assume you want me to
19 start now to do my best to be done at 5:00?

20 MR. MORRIS: Yes, please.

21 EXAMINATION

22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My
23 name is Michael Aigen with the Stinson law firm. I
24 represent Mr. Dondero, HCMS, and HCRE.

25 How are you today?

David Klos - October 27, 2021

1 A. I'm very good, thank you.

2 Q. First topic I wanted to ask you about is the
3 defense raised by some of the defendants related to an
4 oral agreement and condition subsequent.

5 So my question for you generally is, are you
6 aware that some of the defendants in these proceedings
7 have raised a defense that there was a subsequent oral
8 agreement allowing notes to be potentially forgiven if
9 certain events occur?

10 A. Yeah, I'm generally aware of the defenses
11 sitting here today.

12 Q. And how are you generally aware of this
13 defense?

14 A. I don't know with specificity. Potentially
15 through just document flow on the bankruptcy side,
16 potentially with conversations internally or with
17 counsel. But I generally understand them to have been
18 raised, the defenses that is.

19 Q. And I don't want to get into conversations
20 with counsel. I'm not allowed to do that.

21 Let me ask you, have you had any
22 conversations with anyone other than counsel about this
23 subsequent oral agreement defense?

24 A. I have had general conversations with
25 Mr. Seery about it. And other than that, nothing

David Klos - October 27, 2021

1 substantive.

2 Q. And what did you discuss about this with
3 Mr. Seery?

4 A. I've discussed with him, I hate to phrase it
5 this way, the ridiculousness of the defense. Under
6 oath. I've discussed my general understanding of what
7 is being asserted as a defense.

8 Which is that there was some sort of an oral
9 agreement between Jim and his sister at some point in
10 the past pertaining to forgiveness of certain
11 promissory notes that was conditional upon Highland
12 monetizing any of three PE assets for any amount above
13 cost.

14 Q. And is it fair to say that prior to these
15 lawsuits being brought, you weren't aware of any oral
16 agreements related to the promissory notes related to
17 potential forgiveness?

18 A. That's correct. Not that I can remember, and
19 I think I would remember.

20 Q. And other than your conversations with
21 Mr. Seery and counsel, you haven't had any
22 conversations with anyone else about these alleged oral
23 agreements; is that fair to say?

24 A. I'm not sure I understand the question.

25 Q. You told me you may have had questions with

David Klos - October 27, 2021

1 counsel about these oral agreements defense, and you
2 told me about conversations with Mr. Seery, so I'm
3 trying to close that topic.

4 Was there anyone else you had any
5 conversations with about this alleged oral agreement?

6 A. Like I said before, nothing of substance.
7 I've probably mentioned it in passing to other
8 employees, this is what I understand is being asserted
9 in this, but nothing of substance.

10 Q. Do you have any personal knowledge as to
11 whether Mr. Dondero or Ms. Dondero entered into any
12 type of oral agreement prior to the bankruptcy?

13 A. No, not other than what's been pled, or
14 whatever the terminology is.

15 Q. I want to talk a little bit about, you
16 touched on earlier, you gave some testimony about how
17 in -- there were certain term loans that had payments
18 due in December or on or about December 31, 2020.

19 Do you remember talking about that?

20 A. Yeah, generally.

21 Q. And I don't know if you're specifically
22 referring to these loans, but is it also your
23 understanding that HCMS and HCRE also had payments that
24 were due on December 31, 2020?

25 A. Yes.

David Klos - October 27, 2021

1 Q. Is it fair to say that if those payments were
2 to be made, it would have been Ms. Hendrix that would
3 have gone and effectuated those payments?

4 MR. MORRIS: Objection to the form of the
5 question.

6 THE WITNESS: Can you remind me the entities
7 again.

8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE
9 Partners.

10 A. HCMS, yes. HCRE, I'm not sure, maybe.

11 Q. Why might it have been different?

12 A. I just don't recall who had the, you know,
13 kind of bank access to effectuate that payment. I
14 think Kristin did but I'm not certain.

15 Q. It wouldn't have been you; is that fair to
16 say?

17 A. Correct. It would not have been me.

18 Q. And if Ms. Hendrix testified that the
19 instruction she received in December 2020 about not
20 making payments related only to the Advisors and not to
21 HMS or HCRE, would you have any reason to disagree with
22 her?

23 MR. MORRIS: Objection to the form of the
24 question.

25 THE WITNESS: Yeah, I was struggling with

David Klos - October 27, 2021

1 that question. There was a lot to it. If you don't
2 mind.

3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe
4 that will help.

5 MR. MORRIS: Why don't you ask him about his
6 knowledge, instead of Kristin's. You had her as a
7 witness.

8 I'll continue to object. I don't know why
9 you're asking him about her knowledge.

10 MR. AIGEN: Do you want to keep coaching him?

11 MR. MORRIS: No, I'm trying to coach you.

12 MR. AIGEN: Oh, thanks. That's good.

13 Appreciate if you stop coaching your witness.

14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that
15 the instructions she received in December 2020
16 regarding not making any more payments related only to
17 the Advisors and not to HMS or HCRE, would you have any
18 reason to disagree with her?

19 MR. MORRIS: Objection to the form of the
20 question.

21 THE WITNESS: I have no reason to question
22 Kristin's testimony. I'm sure she gave truthful
23 testimony.

24 Q. (BY MR. AIGEN) Are you aware or not of
25 whether Ms. Hendrix was told by Mr. Waterhouse not to

David Klos - October 27, 2021

1 make payments from certain entities in December of
2 2020?

3 MR. MORRIS: Objection to the form of the
4 question.

5 THE WITNESS: Yeah, I'm aware, and I think I
6 spoke to that earlier of the instruction that had come
7 down from Dondero through Frank to Kristin, and I was
8 certainly aware of it.

9 And I'm -- and I think I spoke to the fact
10 that, you know, certainly hearing it from a person who,
11 as I said before, wasn't really on the team at that
12 point, it was certainly my understanding that that was a
13 global instruction at the time.

14 Q. (BY MR. AIGEN) And I want to get into what
15 was actually said and what you remember, so let me ask
16 you this.

17 This instruction that came down started from
18 Jim and went to Frank. Is that your understanding?

19 A. That's my understanding.

20 Q. You weren't there during that discussion I
21 assume; is that correct?

22 A. Correct, I was not.

23 Q. And then Frank gave an instruction to
24 Kristin; is that your recollection?

25 MR. MORRIS: Objection to the form of the

David Klos - October 27, 2021

1 question.

2 THE WITNESS: Yeah, it's my understanding
3 that Frank informed Kristin of that instruction.

4 Q. (BY MR. AIGEN) Were you there when Frank
5 provided this instruction to Kristin?

6 A. I don't believe I was.

7 Q. Then can I ask, how did you become aware that
8 Frank had given this instruction to Kristin?

9 A. Through subsequent conversations with Frank
10 and Kristin. As I said before, I don't recall if it
11 was the three of us or me and Frank or me and Kristin.
12 But subsequent conversations.

13 Q. Are we talking about conversations back in
14 2020 or after the bankruptcy?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: During 2020, December of 2020.

18 Q. (BY MR. AIGEN) Sitting here today, can you
19 say with a hundred percent certainty that the
20 instruction related to all of the entities as opposed
21 to just Advisors?

22 A. So as you pointed out, I was not party to the
23 direction, so I have no way of knowing with any sort of
24 specificity what the direction actually was. I just
25 know how it was conveyed to me and how I understood it.

David Klos - October 27, 2021

1 Q. When you say it was conveyed to you, are you
2 talking about subsequent discussions that you had with
3 Ms. Hendrix and Mr. Waterhouse after they talked to
4 each other?

5 A. Yes.

6 Q. Sitting here today, can you tell me for sure
7 that one of them told you that this instruction related
8 to all of the entities, as opposed to just the
9 Advisors?

10 A. No, I can't say that with certainty, but I
11 think that that was the case. But, again, I can't say
12 with certainty.

13 Q. Would you defer to Mr. Waterhouse and
14 Ms. Hendrix over what the specific instructions were?

15 MR. MORRIS: Objection to the form of the
16 question.

17 THE WITNESS: Like I said, I wasn't part of
18 the conversation, so I would defer to people who
19 received the directions more directly.

20 Q. (BY MR. AIGEN) And you're not aware of
21 anything in writing or anything that reflects these
22 instructions on whether to pay or not to pay certain
23 payments in December of 2020?

24 A. No, I'm not aware of anything in writing.

25 Q. And let's change topics for a second here.

David Klos - October 27, 2021

1 I want to throw out a term. Are you familiar
2 with the term "NAV ratio trigger period" as it was used
3 in --

4 A. In a very, very general sense, yes.

5 Q. And in a general sense what does that term
6 mean to you?

7 A. It's a term I recognize from the limited
8 partnership agreement of HCMLP. It's a defined term in
9 that agreement.

10 Q. To your knowledge, was the NAV ratio trigger
11 period ever reached or triggered prior to the Highland
12 bankruptcy?

13 A. I don't know the definition, so I don't know
14 based on the definition whether it had or hadn't.

15 Q. Sitting here today, though, it's not your
16 belief, based on your experience, that it was
17 triggered; is that fair to say?

18 MR. MORRIS: Objection to the form of the
19 question.

20 THE WITNESS: I don't know the consequence of
21 being in a trigger period, I guess is what -- how I'm
22 trying to answer your question.

23 Q. (BY MR. AIGEN) Have you ever had any
24 conversations with Nancy Dondero?

25 A. Yes.

David Klos - October 27, 2021

1 Q. Generally, how many and what was the
2 reasoning?

3 A. Probably less than five. I think maybe only
4 one or two that I can really remember.

5 Q. At a high level what were those conversations
6 about?

7 A. From my recollection of my conversations with
8 her, they pertained to the DRIP, which is a dividend
9 reinvestment program that I helped.

10 Q. And approximately when were these
11 conversations?

12 A. I don't know. Sometime between 2017 and
13 probably 2019. I couldn't tell you with any
14 specificity. These were very informal.

15 Q. Fair to say that you've never had any
16 conversations with Nancy Dondero about any of the loans
17 at issue in this case?

18 A. No, no, no, I've never had a conversation
19 with her like that.

20 Q. And fair to say that you've never had any
21 conversations with Nancy Dondero about compensation for
22 Jim or any other officers at Highland?

23 A. Correct.

24 MR. AIGEN: Why don't we go off the record
25 for two minutes. I think I'm either done or about

David Klos - October 27, 2021

1 done.

2 (Off the record.)

3 Q. (BY MR. AIGEN) You understand you're still
4 under oath?

5 A. Yes.

6 Q. Are you aware of any loans that Highland has
7 made to any employees or officers that were forgiven in
8 all or in part?

9 A. Yes.

10 Q. Can you tell me who?

11 A. I don't know that this will be a complete
12 list, but there were a few employees in the kind of
13 late aughts, maybe 2010, 2011 frame.

14 Q. Do you know the names?

15 A. One was Jack Yang. Another, I'm not sure if
16 it was forgiven or not, that's why I'm hesitating, but
17 it was Tim Lawler. I think his was forgiven in part or
18 in full, but I'm not a hundred percent certain.

19 Q. And any other individuals that received loans
20 that were forgiven in part that you're aware of?

21 A. Not that I recall, but there could be others.
22 Some of this is very, very old.

23 Q. Changing topics here a little bit, I'm going
24 to combine two entities to try to speed this up. If
25 you need to separate, that's fine.

David Klos - October 27, 2021

1 Can you just generally explain to me what
2 services Highland Capital Management provided for
3 HCMS and HCRE?

4 A. For HCMS -- I do need to separate these a
5 little bit. For HCMS, really full-service accounting,
6 tax, treasury, cash payments. I said tax. Valuation.
7 Nothing personnel-wise because they didn't have any
8 employees.

9 That's all I can think of right off the top
10 of my head, but I could be missing some.

11 Q. And what about HCRE? How is that different?

12 A. Similar, except different types of assets.
13 So more real estate, so less heavy.

14 Maybe not necessarily differences in terms of
15 the types of services, but services would have, I'd
16 say, more cash activity, more variety of investments,
17 which triggers different types of activities going on
18 at those entities.

19 But similar in terms of tax operations,
20 making payments. HCRE didn't have employees, so no
21 payroll. So these would be the broad areas that I
22 would think about.

23 Q. And you mentioned making payments. Would one
24 of those services that Highland provided for these two
25 entities include making loan payments on the term loans

David Klos - October 27, 2021

1 like the term loans at issue in these proceedings?

2 MR. MORRIS: Objection to the form of the
3 question.

4 THE WITNESS: I think I mentioned before, I
5 couldn't remember whether or not Kristin was authorized
6 to make payments with respect to HCRE. I think she
7 probably was, but I don't know that with certainty.

8 But, you know, for services, certainly Kristin
9 and her team would be responsible for making those
10 payments, subject to the proper authorization.

11 Q. (BY MR. AIGEN) And I'm sorry if I asked this
12 before. If it wasn't Kristin for HCRE, do you have an
13 idea who it would have been?

14 A. If not Kristin, it would have been Melissa
15 Schroth.

16 Q. And how were those responsibilities split up?
17 What entities was Melissa Schroth responsible for?

18 A. Generally speaking, Melissa was more
19 responsible for entities that were really, like -- I'm
20 going to use this in the most general sense, like Jim
21 entities, Jim's trusts, Jim personally.

22 And for HCRE it was kind of in the middle.
23 When it started out it kind of was more Jim world and
24 then over time it got more complex.

25 And as entities got more complex over time

David Klos - October 27, 2021

1 they tend to get transitioned from Melissa to corporate
2 accounting. And when they got really complex over to
3 another group of fund accountants.

4 So this is one that was, at its beginning,
5 Melissa was the, called primary accountant. And at
6 some point in time that transitioned to the corporate
7 accounting team. I can't remember when the cash
8 process kind of cut over.

9 Q. Is there a list somewhere saying Melissa is
10 responsible for these, Kristin for the others, or is it
11 just more of a pattern or matter of practice?

12 A. More of a matter of practice. If you're
13 responsible for an entity, you're responsible. If
14 you're not, then you're not.

15 MR. AIGEN: That's all the questions I have.
16 Thank you for your time.

17 THE WITNESS: Thank you.

18 EXAMINATION

19 Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's
20 pick up where Mr. Aigen left off.

21 To the best of your knowledge, did HCMS have
22 a shared services agreement with Highland?

23 A. No, it didn't that I'm aware of.

24 Q. But you described certain services that HCMLP
25 provided to HCMS; is that right?

David Klos - October 27, 2021

1 A. Yes.

2 Q. Do you know whether HCMFA ever compensated --
3 do you know whether HCMS ever compensated HCMLP for any
4 of those services that HCMLP provided?

5 A. No, it didn't.

6 Q. You mentioned HCRE. To the best of your
7 knowledge, did HCRE have a shared services agreement
8 with Highland Capital Management, LP?

9 A. No, it didn't.

10 Q. Did HCRE provide the services that --
11 withdrawn.

12 Did HCMLP provide the services to HCRE that
13 you just described?

14 A. Yes.

15 Q. Did HCRE ever compensate HCMLP for any of the
16 services that HCMLP provided?

17 A. No.

18 Q. Okay. Mr. Rukavina asked you some questions
19 about payments that were made on the NexPoint loan in
20 the first half of 2019.

21 Do you remember that?

22 A. Yes, generally.

23 Q. Okay. Notwithstanding those payments, did
24 your group continue to carry on its books and records
25 NexPoint's obligation to make the installment payment

David Klos - October 27, 2021

1 that was due at the end of the year?

2 A. Yes, we continued to track it through our
3 interest schedules and through cash.

4 Q. So in the debtor's books and records is there
5 any evidence that the payments that were made in early
6 2019 were intended to relieve NexPoint's obligation to
7 make the installment payment due at the end of the
8 year?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: No, I don't believe so.

11 Q. (BY MR. MORRIS) Did you have a conversation
12 with anybody at any time in the year 2019 about whether
13 the payments made earlier in the year on behalf of
14 NexPoint would eliminate or suspend its obligation --
15 withdrawn.

16 Did you have any conversation with anybody --
17 I think I screwed up the dates. Going to have to start
18 over.

19 Let me ask better questions.

20 You looked with Mr. Rukavina at certain
21 payments that were made in early 2019 with respect to
22 the NexPoint note.

23 Do I have that right?

24 A. Yes.

25 Q. Notwithstanding those payments, did NexPoint

David Klos - October 27, 2021

1 make the installment payment that was due at the end of
2 2019?

3 MR. RUKAVINA: Objection. Calls for a legal
4 conclusion.

5 THE WITNESS: It did make the payment that
6 was due at the end of 2019.

7 Q. (BY MR. MORRIS) And the payment that it made
8 at the end of 2019, was that the annual installment
9 payment that was called for in the note itself?

10 MR. RUKAVINA: Objection. Legal conclusion.

11 THE WITNESS: Yes, it was a payment pursuant
12 to the note.

13 Q. (BY MR. MORRIS) Did anybody ever tell you at
14 any time prior to the commencement of this lawsuit that
15 any prior payment by or on behalf of NexPoint relieved
16 it of any obligation to pay the installment payment due
17 at the end of 2020?

18 A. No.

19 Q. And did in fact -- is it your understanding
20 that Mr. Dondero specifically authorized Highland to
21 effectuate a payment on NexPoint's behalf in mid
22 January 2021?

23 A. I don't have specific knowledge, but I know
24 that to have occurred.

25 Q. Okay. Did anybody ever tell you in 2021 --

David Klos - October 27, 2021

1 withdrawn.

2 Did anybody tell you in December 2020 or
3 December -- or January 2021 that NexPoint didn't have
4 to make the installment payment at year end 2020
5 because of some prior prepayment?

6 A. No.

7 Q. Can you think of any reason -- withdrawn.

8 Did you ever hear Mr. Dondero -- withdrawn.

9 Did you ever see anything in writing where
10 NexPoint ever contended, prior to February 1, 2021,
11 that it had no obligation to make the payment due at
12 the end of 2020 because of some prepayment issue?

13 A. No, not that I remember.

14 Q. Can you think of any reason why Mr. Dondero
15 would have authorized a payment by NexPoint to HCMLP on
16 account of the note in January of 2021 if he actually
17 believed at that time that no obligation was due
18 because of a prior prepayment?

19 MR. RUKAVINA: Objection. Speculation, lacks
20 foundation.

21 THE WITNESS: No.

22 Q. (BY MR. MORRIS) Does it make any sense to
23 you as an accountant that you would pay a seven-figure
24 sum of money that you didn't think was due and owing?

25 A. No, that does not make sense to me.

David Klos - October 27, 2021

1 Q. Can you get Exhibit 13, please.

2 A. Got it.

3 Q. You were asked some questions about
4 paragraph 3.

5 Do you see that?

6 A. Yes.

7 Q. Does paragraph 3 mention annual installment
8 payments at all?

9 A. No, I'm not seeing it.

10 Q. Does paragraph 3 state in any way that a
11 prepayment as described in that paragraph would relieve
12 the maker of the obligation to make annual installment
13 payments?

14 A. No.

15 Q. Can you turn to the next page and look at
16 paragraph 5.

17 Are you familiar with that paragraph at all?

18 A. No. I mean, I've seen it before, but this
19 is, as I said before, this is a provision that probably
20 would have been in most, if not all, of these types of
21 notes.

22 Q. Can you get Exhibit 3, please. This is your
23 email dated May 2, 2019.

24 Do I have that right?

25 A. Yes.

David Klos - October 27, 2021

1 Q. And you sent it to the corporate accounting
2 email group; is that right?

3 A. I did.

4 Q. And to the best of your recollection, was
5 Mr. Waterhouse included in that email group?

6 A. Yes, absolutely.

7 Q. And did you instruct the corporate accounting
8 team to transfer \$2.4 million from HCMLP to HCMFA on
9 May 2, 2019?

10 A. Yes, specifically Blair, but yes, for the
11 team as well.

12 Q. The whole team was aware of this?

13 A. The whole team is on the email, and I'm
14 sending to Blair, who is the AP person, to please set
15 up the payment.

16 Q. Is it fair to say that you're being
17 completely transparent here by including the entire
18 corporate accounting group on this email?

19 A. Yes.

20 Q. And did you tell the entire corporate
21 accounting group that this transaction would be a,
22 quote, new interco loan?

23 A. Yes, that's what the email says.

24 Q. Do you have any reason to believe that
25 Mr. Waterhouse didn't get this?

David Klos - October 27, 2021

1 A. No, he got this.

2 Q. And did Mr. Waterhouse tell you at any time
3 in the history of the world that this \$2.4 million
4 should not have been booked as a loan?

5 A. No.

6 Q. Did Mr. Dondero tell you at any moment in the
7 history of the world that this transaction should not
8 have been booked as a loan?

9 A. No.

10 Q. You mentioned that there was an audit that
11 followed shortly thereafter?

12 A. Yes.

13 Q. Are you familiar with the debtor's audited
14 financial statements for the period ending 2018?

15 A. Yes, generally. Not total recall, but yes.

16 Q. Are you aware that this loan was included as
17 a subsequent event in the debtor's audited financial
18 statements?

19 A. Yes.

20 MR. RUKAVINA: Objection. Best evidence.

21 Q. (BY MR. MORRIS) Did Mr. Dondero or
22 Mr. Waterhouse or anybody ever tell you that the debtor
23 should not have included this \$2.4 million loan in its
24 audited financial statements?

25 MR. RUKAVINA: Objection. Best evidence.

David Klos - October 27, 2021

1 THE WITNESS: No.

2 Q. (BY MR. MORRIS) Okay. And the next day
3 there was another loan; right?

4 A. Yes.

5 Q. I'm going to show you here a document that's
6 been produced.

7 MR. RUKAVINA: Would you email it to me and I
8 can print it out for the court reporter.

9 MR. MORRIS: You want to come over here and
10 look --

11 MR. RUKAVINA: I know it. I'm just thinking
12 that we can append it to the record right now.

13 MR. MORRIS: It's eight pages, so it's part
14 of a whole production.

15 MR. RUKAVINA: But it's just one email?

16 MR. MORRIS: Just one email that I'm talking
17 about. So we're looking at Bates stamp D-CNL003763.

18 And I'll email it to you when we're done here.
19 And you're welcome to come over here if you'd like to
20 see it.

21 Q. (BY MR. MORRIS) Mr. Klos, can you take a
22 look at the email that I have on my screen.

23 A. Yes.

24 Q. And do you see that it's an email from
25 Kristin Hendrix to the corporate accounting group on

David Klos - October 27, 2021

1 Friday, May 3?

2 A. Yes.

3 Q. And were you also included in the corporate
4 accounting email string?

5 A. Yes.

6 Q. Can you read the email out loud, please.

7 A. It says, Blair, please set up a wire from
8 HCMLP to HCMFA for 5 million as a new loan,
9 parentheses, 4.4 million should be coming in from Jim
10 soon. Hayley, please add this to your loan tracker. I
11 will paper the loan.

12 Q. So based on that email, did you understand on
13 May 3 that HCMLP was going to loan \$5 million to HCMFA?

14 A. Yes, HCMFA.

15 Q. And did you understand that Kristin
16 specifically told the corporate accounting group that
17 she would take responsibility for papering the loan?

18 A. Yes, that's what she says.

19 Q. Do you recall whether Mr. Waterhouse ever
20 objected to any aspect of Kristin's email?

21 A. He didn't.

22 Q. Do you recall in the history of the world
23 whether Mr. Waterhouse ever told you that this
24 \$5 million transaction should not have been booked as a
25 loan?

David Klos - October 27, 2021

1 A. No.

2 Q. Did anybody in the history of the world ever
3 raise a question to you as to whether or not Kristin
4 was authorized to paper the loan, as she describes it
5 in this particular email?

6 A. No.

7 Q. Do you know if this \$5 million loan was also
8 included in the debtor's audited financial statements?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: Yes. Again, subsequent event.

11 Q. (BY MR. MORRIS) Okay. And did anybody in
12 the history of the world ever tell you that Highland
13 should not have included as a subsequent event in its
14 2018 audited financial statement this \$5 million loan?

15 A. No.

16 MR. RUKAVINA: Objection. Best evidence.

17 THE WITNESS: No.

18 Q. (BY MR. MORRIS) Do you know if HCMFA had its
19 financial statements audited?

20 A. It did.

21 Q. And are you generally familiar with those
22 financial statements?

23 A. Yes.

24 Q. Are you aware that these two loans totaling
25 \$7.4 million were included in HCMFA's audited financial

David Klos - October 27, 2021

1 statements as a subsequent event for the period ended
2 December 31, 2018?

3 A. Yes.

4 MR. RUKAVINA: Objection. Best evidence.

5 Q. (BY MR. MORRIS) Did anybody in the history
6 of the world ever tell you that HCMFA should not have
7 included as a subsequent event the borrowing of the
8 money reflected in these loans?

9 MR. RUKAVINA: Objection. Best evidence.

10 THE WITNESS: No, no one said that.

11 Q. (BY MR. MORRIS) Do you know if HCMFA
12 included these loans as a liability on its balance
13 sheet?

14 A. It did.

15 MR. RUKAVINA: Objection. Move to strike.
16 Best evidence.

17 Q. (BY MR. MORRIS) Did anyone in the history of
18 the world ever tell you that HCMFA should not have
19 included these loans as a liability on its balance
20 sheet?

21 MR. RUKAVINA: Objection. Best evidence.

22 THE WITNESS: No.

23 Q. (BY MR. MORRIS) Okay. Do you recall that in
24 October of 2020 HCMFA and NexPoint made a report to the
25 retail board?

David Klos - October 27, 2021

1 A. Yes.

2 Q. And are you aware that that's part of the
3 annual review process?

4 A. Yes, it's the 15(c) process.

5 Q. By the way, as we're talking about these
6 issues, did Mr. Waterhouse have -- was he an officer of
7 HCMFA in 2019 and 2020?

8 A. Yes.

9 Q. And what's your understanding as to the
10 office he held?

11 A. Treasurer, I believe.

12 Q. And do you know if Mr. Dondero held an
13 officer position with respect to each of the Advisors?

14 A. He did.

15 Q. What position did he hold?

16 A. I don't recall with certainty, but I believe
17 president.

18 Q. As officers of those two entities, do you
19 have any knowledge as to whether they participated in
20 the communications with the retail board in the fall of
21 2020?

22 A. I believe Jim and Frank both did.

23 Q. And do you know whether the retail board
24 asked the Advisors for a report on all obligations due
25 and owing to HCMLP and affiliates?

David Klos - October 27, 2021

1 A. They asked for financials, I believe as of
2 6/30 as part of that process.

3 Q. And are you aware as to whether or not the
4 financials that were provided to the retail board
5 included, among other things, the \$7.4 million in notes
6 that were -- that we're talking about here?

7 A. Yes, those financials would have included
8 those amounts as liabilities to HCMLP.

9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell
10 you or anybody to your knowledge that the Advisors
11 should not have told the retail boards that they were
12 obligated to pay under those two notes?

13 A. No.

14 Q. Let's talk about loan forgiveness for a
15 moment.

16 How long have you been with the company?

17 A. March of 2009.

18 Q. At any time since you've been employed by
19 Highland, has Highland ever forgiven a promissory note
20 that it held where the maker was a corporate affiliate?

21 A. Not that I can recall.

22 Q. Have you ever heard prior -- has anybody ever
23 told you that before you joined the company, Highland
24 had ever forgiven in whole or in part any note that it
25 held where the maker was a corporate affiliate?

David Klos - October 27, 2021

1 A. Not that I'm aware of.

2 Q. You referred to a couple of loans that were
3 given to individuals earlier.

4 Do you remember that?

5 A. Yes.

6 Q. What's the biggest loan that you can recall
7 Highland ever forgiving?

8 A. The largest one that I can remember was
9 a half-million dollars, 500,000.

10 Q. So you have no knowledge of any loan ever
11 being forgiven where the principal amount forgiven
12 exceeded \$500,000; is that right?

13 A. Not that I'm aware of.

14 Q. And when is the last loan that Highland
15 forgave in whole or in part to one of its officers or
16 employees that you can recall?

17 A. I don't know a specific year, but it would
18 have been in the 2010, 2011 time frame. Maybe 2012,
19 but I suspect '10 or '11.

20 Q. So is it fair to say to the best of your
21 recollection and knowledge that Highland did not
22 forgive a single loan made to an officer or employee
23 for at least seven years prior to the petition date?

24 A. There's none that I can think of.

25 Q. Let's just turn our attention to

David Klos - October 27, 2021

1 December 2020.

2 Do you recall that you testified at length
3 about your understanding of the conversations with
4 Mr. Waterhouse and Ms. Hendrix?

5 Do you remember that?

6 A. Yes.

7 Q. Okay. Are you aware of any instruction ever
8 made by Mr. Dondero or Mr. Waterhouse in November or
9 December 2020 in order to make the payments that were
10 due under the three term notes -- withdrawn.

11 There were three term notes that were due --
12 withdrawn.

13 There are three term notes at issue in this
14 case. Do you understand that?

15 A. Yeah, that's my understanding.

16 Q. And one of them was issued by NexBank; is
17 that right?

18 A. NexPoint Advisors.

19 Q. Thank you for the clarification.

20 One was by HCRE?

21 A. Correct.

22 Q. And one was from HCMS; do I have that right?

23 A. Yes.

24 Q. And all three of those notes were executed as
25 of May 31, 2017; right?

David Klos - October 27, 2021

1 A. Yeah, that was the effective date on all
2 three.

3 Q. And they all rolled up previously outstanding
4 notes that were due and payable to Highland.

5 Do I have that right?

6 A. Correct. To the best of my recollection.

7 Q. So we'll refer to those notes as the term
8 notes. Is that okay?

9 A. Sure.

10 Q. Do you have any knowledge that Mr. Dondero or
11 Mr. Waterhouse ever instructed HCMLP to make the
12 installment payments that were due at the end of 2020
13 with respect to any of those term notes?

14 A. No, I don't believe they provided that
15 instruction to make those payments.

16 MR. RUKAVINA: Objection. Move to strike.
17 Lacks foundation.

18 MR. MORRIS: I'm asking him if he ever heard.

19 MR. RUKAVINA: But he answered a different
20 question. He answered a different question.

21 Q. (BY MR. MORRIS) Did you ever see anything in
22 writing where either Mr. Dondero or Mr. Waterhouse
23 directed HCMLP to make the annual installment payments
24 that were due at the end of 2020 with respect to any of
25 the term notes?

David Klos - October 27, 2021

1 A. No.

2 Q. Okay. But to the best of your recollection,
3 in the 13-week forecast, those forecasts included the
4 installment payments that were due at the end of the
5 year; is that right?

6 A. They did.

7 Q. Did anybody ever tell you prior to
8 February 1, 2021, that your group had made a mistake by
9 not making the payment -- any of the payments that were
10 due under the term notes at the end of 2020?

11 A. Not that I'm aware of.

12 Q. Did anybody tell you prior to February 1,
13 2021, that the makers of the term notes expected
14 Highland to effectuate the payments that were due at
15 the end of the year without approval by Mr. Waterhouse
16 or Mr. Dondero?

17 A. No.

18 Q. Have you seen any protest in writing prior to
19 the commencement of the litigation by any of the makers
20 of the notes about a failure on the part of HCMLP to
21 perform its duties and make that payment at the end of
22 the year?

23 A. No.

24 MR. MORRIS: I have no further questions.

25 MR. RUKAVINA: I have five minutes.

David Klos - October 27, 2021

1 FURTHER EXAMINATION

2 Q. (BY MR. RUKAVINA) Go to Exhibit 16, please,
3 1-6.

4 A. Sure.

5 Q. Sir, this is an email string regarding that
6 Rule 15(c) that you were talking about. I'm just going
7 to ask you about the top email, but you're welcome to
8 read the whole.

9 A. Uh-huh.

10 Q. You're copied on Mr. Waterhouse's email there
11 October 6, 2020; right?

12 A. Yes, I'm on the email.

13 Q. And Mr. Waterhouse writes, the HCMFA note is
14 a demand note. You would have read that; right?

15 A. Yes.

16 Q. Did you ever correct Mr. Waterhouse when he
17 says the HCMFA note, as opposed to notes?

18 A. No, that's not something I would have
19 corrected from Frank.

20 Q. Do you recall right now that you might have,
21 when you read this, realized that he made a mistake?

22 A. It would have been such a de minimus,
23 inconsequential mistake that I don't know that I would
24 have addressed it.

25 Q. What about two sentences over, there was an

David Klos - October 27, 2021

1 agreement between HCMLP and HCMFA the earliest they
2 could demand is May 2021.

3 Did you ever write to him and say that too
4 was a mistake?

5 A. I didn't write to him.

6 Q. Did you realize back then when you read it
7 that he had made a mistake?

8 A. I'm not certain.

9 Q. Did you -- and I'm not suggesting that you
10 should have. You're a busy man. But did you attach
11 any significance outside of the ordinary to this email
12 exchange?

13 MR. MORRIS: Objection to the form of the
14 question.

15 THE WITNESS: I struggle with how to answer
16 that. I saw that this note was in response to retail
17 15(c) follow-up on the Advisors.

18 At this point my role was different, where I
19 was dealing with really the retail funds primarily. So
20 the fact that I'm even on this email is somewhat
21 incidental.

22 Q. (BY MR. RUKAVINA) But surely on October 6,
23 2020 you knew that there were four HCMFA demand notes,
24 didn't you?

25 A. I'm sure I would have had access to that

David Klos - October 27, 2021

1 information. I'm not sure that I was keeping track of
2 how many were outstanding at any given point in time.

3 Q. And surely on October 6, 2020 you knew that
4 only two of them couldn't be demanded by May of 2021,
5 didn't you?

6 A. Again, I don't know that I was even really
7 thinking about these notes at that time.

8 Q. Even though you were preparing weekly cash
9 forecasts for Mr. Seery?

10 A. I wasn't preparing a weekly cash forecast for
11 Mr. Seery.

12 Q. Going to Exhibit 13, please. Mr. Morris
13 asked you a couple questions about this.

14 A. I'm sorry, 13?

15 Q. Yes, sir. And again, that paragraph 3 that
16 talks about prepayment.

17 Can you find anything in here, sir, that says
18 that a prepayment does not relieve the maker of any
19 regularly scheduled payment?

20 A. Sorry, that's a lot to comprehend. If you
21 could ask again.

22 Q. Is there any provision that you can see here
23 that's to the effect that a prepayment will not relieve
24 the maker of any regularly scheduled payment?

25 A. I don't see that specific provision. I just

David Klos - October 27, 2021

1 read it for what is on the page.

2 Q. Isn't it, sir, in your experience the case
3 that a promissory note, if it intended not to relieve
4 the borrower of regularly scheduled payments would say
5 that a prepayment does not relieve the borrower of
6 regularly scheduled payments?

7 MR. MORRIS: Objection to the form of the
8 question.

9 THE WITNESS: That's a legal question. I
10 can't -- I don't know the answer.

11 Q. (BY MR. RUKAVINA) Do you remember seeing
12 promissory notes that say something like that?

13 A. Not that I can recall.

14 Q. You'd be surprised if that's what promissory
15 notes say?

16 MR. MORRIS: Objection to the form of the
17 question.

18 THE WITNESS: I don't know.

19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you
20 about this. I'm trying to burn through this so the man
21 can make his plane.

22 Section 2.1 talks about 30 equal annual
23 payments, annual installments.

24 You see that?

25 A. Yes, I see that.

David Klos - October 27, 2021

1 Q. And Mr. Morris asked you whether you see
2 anything in here that says that a prepayment relieves
3 an annual installment.

4 Do you remember that question?

5 MR. MORRIS: Objection. That's not what I
6 asked.

7 THE WITNESS: I don't remember that question.

8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3
9 together, what would a prepayment apply to other than
10 an annual installment? Do you have a view on that?

11 MR. MORRIS: Objection to the form of the
12 question.

13 THE WITNESS: Again, I struggle with
14 prepayment. But as I read Section 3, it would be
15 applied first to unpaid accrued interest and then to
16 unpaid principal.

17 Q. (BY MR. RUKAVINA) Have you ever in your
18 personal life prepaid a promissory note before -- have
19 you ever in your personal life prepaid a promissory
20 note prior to its maturity?

21 MR. MORRIS: Objection to the form of the
22 question.

23 THE WITNESS: I don't know.

24 Q. (BY MR. RUKAVINA) Sitting here today, with
25 your CPA, your MBA and you're a CFO of a large entity,

David Klos - October 27, 2021

1 you don't understand what a prepayment means?

2 MR. MORRIS: Objection. Argumentative.

3 I direct you not to answer.

4 You're going to have ask a different question.

5 That's an argumentative question and it's insulting.

6 MR. RUKAVINA: What's the privilege on which
7 you're directing him not to answer?

8 MR. MORRIS: I just said it's argumentative.

9 MR. RUKAVINA: I'm trying to let you get to
10 your flight.

11 MR. MORRIS: Ask a proper question. Don't
12 make this about me.

13 Q. (BY MR. RUKAVINA) You were going to answer
14 my question, sir?

15 MR. MORRIS: No, I'm directing him not to
16 answer.

17 MR. RUKAVINA: Then we'll end this deposition
18 with a motion to compel.

19 MR. MORRIS: Okay. You do that.

20 MR. RUKAVINA: I'm making a motion to compel.
21 We'll call the judge as soon as we land in New York
22 tomorrow.

23 MR. MORRIS: You have to read the whole
24 question. You can ask the question without the
25 verbiage; right?

David Klos - October 27, 2021

1 MR. RUKAVINA: And I asked you on the basis
2 of what privilege are you instructing your --

3 MR. MORRIS: Argumentative.

4 MR. RUKAVINA: That's not a privilege.

5 MR. MORRIS: Sir, you can rephrase your
6 question and end this right now by not being insulting
7 to my client.

8 Q. (BY MR. RUKAVINA) I was not trying to be
9 insulting, sir.

10 I'm asking you again, you do not, sitting
11 here today, have an understanding of what the word
12 "prepayment" for a promissory note means?

13 MR. MORRIS: Objection to the form of the
14 question.

15 You can answer that one.

16 THE WITNESS: In the context that you're
17 asking the question --

18 Q. (BY MR. RUKAVINA) No, I'm not asking any
19 context. Sitting here today, do you have an
20 understanding of what the word "prepayment" means when
21 it comes to a borrower/lender relationship?

22 MR. MORRIS: Objection to the form of the
23 question.

24 THE WITNESS: Yes, I have a general
25 understanding.

David Klos - October 27, 2021

1 Q. (BY MR. RUKAVINA) What is your
2 understanding?

3 A. That -- you can look at the note.

4 Q. I'm not asking about the note. We got to go
5 step by step.

6 What is your general understanding as to what
7 a prepayment means?

8 MR. MORRIS: Objection to the form of the
9 question.

10 THE WITNESS: It depends on the context and
11 it's going to depend on what the note says about
12 prepayments. So I have a hard time answering that
13 question.

14 Q. (BY MR. RUKAVINA) So you would agree with me
15 that you have to look at the note before you can answer
16 that question?

17 MR. MORRIS: Objection to the form of the
18 question.

19 THE WITNESS: I would want to look at the
20 note before I answer the question, because prepayment
21 is a term that can be used as a defined term or in a
22 casual sense, and those two can sometimes get confused
23 and misconstrued.

24 Q. (BY MR. RUKAVINA) Would you agree with me
25 that in any and all circumstances a prepayment is a

David Klos - October 27, 2021

1 payment made prior to the time that it's due?

2 MR. MORRIS: Objection to the form of the
3 question.

4 THE WITNESS: Yes, in the most general sense
5 a prepayment, the prefix "pre" indicates that it's
6 before some other event. So from that standpoint,
7 prepayment means it was to some extent paid early.

8 MR. RUKAVINA: Thank you.

9 Pass the witness.

10 MR. MORRIS: No further questions.

11 Michael?

12 MR. AIGEN: No questions.

13 THE REPORTER: Mr. Morris, do you want a copy
14 of the transcript?

15 MR. MORRIS: I sure do.

16 THE REPORTER: Mr. Aigen, do you want a copy
17 of the transcript?

18 MR. AIGEN: Yes, we would also like a copy.

19 MR. MORRIS: Yeah, and I'd like that rush.

20 (Whereupon, the deposition adjourned at
21 5:14 P.M.)

22 --oOo--

23 I declare under penalty of perjury that the
24 foregoing is true and correct. Subscribed at
25 _____, Texas, this ____ day of

David Klos - October 27, 2021

1 _____, 2021.

2

3

4 _____

5 DAVID KLOS

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CERTIFICATE OF REPORTER


I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021


Brandon Combs, Certified Shorthand Reporter No. 10927 in and for the

HCMFA APP 0790

David Klos - October 27, 2021

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State of Texas
Dickman Davenport, Inc. Cert 312
4228 North Central Expressway
Suite 101, Dallas, TX 75206
(214) 855-5100 (800) 445-9548
Email: info@dickmandavenport.com
www.dickmandavenport.com
My commission expires 1-31-23

David Klos - October 27, 2021

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|------------------------|--------------------------|-------------------------|------------------------|--------------------------|
| A | 49:4,5,12,20,21 | agent 85:16 | 80:21 84:14 | 122:10,22 |
| ability 42:12 | 50:8,21 51:3 | ago 19:6 34:25 | 97:12 123:11 | 126:7,12 |
| 43:21 78:2 88:8 | 131:15 | 36:20 39:21 | amounts 28:24 | anymore 57:1 |
| 88:10 | accumulated | 43:5 94:20 | 41:7 122:8 | 61:22 62:7 |
| able 31:20 32:2 | 47:22 | 95:11 | analysis 30:9 | AP 115:14 |
| above-styled | accurate 27:25 | agree 8:11 47:10 | 53:25 54:6,9,18 | apologize 9:21 |
| 1:21 | 85:10 | 47:11 51:7 77:2 | 55:1,8 89:13 | 27:22 63:11 |
| absolutely 12:4 | acknowledgment | 89:19 134:14 | analyst 5:17,25 | 66:21 77:1 |
| 16:10 77:1 80:1 | 87:21,22 | 134:24 | and/or 40:12 | apparatus 12:9 |
| 80:14 90:1,4,10 | act 11:5 | agreement 12:23 | 67:7 91:22 | APPEARANC... |
| 94:1 115:6 | activities 107:17 | 84:11 96:4,8,23 | annual 23:22 | 2:1 |
| accepting 19:17 | activity 107:16 | 97:9 98:5,12 | 80:9 112:8 | appeared 2:5,12 |
| access 99:13 | actual 37:5 85:13 | 104:8,9 109:22 | 114:7,12 121:3 | 2:19 |
| 128:25 | add 118:10 | 110:7 128:1 | 125:23 130:22 | appears 49:3 |
| account 53:20 | additional 89:2 | agreements 41:3 | 130:23 131:3 | 64:2 |
| 60:3 113:16 | address 64:7 | 97:16,23 98:1 | 131:10 | append 117:12 |
| accountant 26:5 | addressed 44:9 | agrees 48:7 | answer 16:23,25 | appended 137:16 |
| 26:9,15,20 | 127:24 | ahead 45:7 | 17:2 20:18,20 | application 37:8 |
| 39:12,17 90:19 | adjourned | Aigen 2:18 3:4 | 21:3,15 22:1 | 37:9,15,16 |
| 109:5 113:23 | 135:20 | 95:18,22,23 | 25:5 28:10 | applied 39:17 |
| accountant's | advisor 9:24 71:7 | 99:8 100:3,10 | 35:16 41:18 | 46:8,9 48:11,14 |
| 39:13 | 74:19 | 100:12,14,24 | 50:11 53:24 | 49:5,8 64:13,16 |
| accountants | advisor-type 6:7 | 101:14 102:4 | 55:15,23 71:5 | 65:1 131:15 |
| 109:3 | advisors 1:10 | 102:18 103:20 | 78:11 79:7 87:7 | apply 38:24 |
| accounted 38:6 | 12:14,15,17 | 104:23 105:24 | 94:13,14,17,21 | 131:9 |
| 45:8,11 64:23 | 13:3,6 27:1 | 106:3 108:11 | 104:22 128:15 | Appreciate |
| accounting 4:16 | 52:19 55:1 | 109:15,20 | 130:10 132:3,7 | 100:13 |
| 6:5,5,11,11 | 60:22 65:23 | 135:12,16,18 | 132:13,16 | appropriate |
| 7:14,17,21 8:23 | 71:6 72:22 86:6 | Akard 1:24 2:4 | 133:15 134:15 | 35:19,22 |
| 9:3,5,5,9,15,23 | 99:20 100:17 | aleck 50:7 | 134:20 | approval 66:14 |
| 10:12 33:22 | 102:21 103:9 | alleged 97:22 | answered 21:2 | 77:19,23 78:3 |
| 35:9,16,20 | 121:13,24 | 98:5 | 41:17 56:11 | 78:21 79:3 |
| 43:18 53:4 | 122:10 124:18 | Allocation 70:25 | 76:19 85:21 | 126:15 |
| 62:10,11 70:15 | 128:17 | 74:12 75:6 | 91:10 92:5,6 | approvals 80:9 |
| 74:22 84:2 | affect 16:11,12 | allow 75:4 | 94:9 125:19,20 | approximate 6:1 |
| 107:5 109:2,7 | 16:20 | allowed 46:13 | answering | 63:2 |
| 115:1,7,18,21 | affiliate 39:23 | 81:22 82:1 | 134:12 | approximately |
| 117:25 118:4 | 122:20,25 | 94:16 96:20 | answers 9:18 | 5:9 105:10 |
| 118:16 | affiliated 10:21 | 137:15 | 16:10,13 | April 7:13,22 |
| accrue 49:13 | 34:8 35:4,11 | allowing 96:8 | anybody 24:13 | 11:16,21 88:9 |
| accrued 38:8 | 36:2 61:15 | amortization | 60:1 80:16 | areas 107:21 |
| 46:8,16,20,25 | affiliates 38:5 | 23:16 28:1 | 111:12,16 | argumentative |
| 47:1,4,5,11,14 | 51:20 121:25 | amount 15:5,15 | 112:13,25 | 90:15 132:2,5,8 |
| 47:18,19,24,25 | AFR 86:7 | 37:5 47:22 | 113:2 116:22 | 133:3 |
| 48:4,5,7,15 | afternoon 95:22 | 59:13 73:2 | 119:2,11 120:5 | art 8:1 9:3 10:12 |

David Klos - October 27, 2021

| | | | | |
|---------------------------|--------------------------|-------------------------|---------------------------|---------------------------|
| ascertain 45:2,4 | 54:14 | 109:23 115:12 | 117:17 | bit 7:9 12:12 14:2 |
| asked 16:18 20:5 | attach 128:10 | 116:16 119:24 | began 5:11 | 30:15 33:12 |
| 21:2 30:18 | attempt 87:7 | 121:2 122:3 | beginning 109:4 | 39:3 48:1 98:15 |
| 41:10,17 44:10 | attention 123:25 | 123:1,13 124:7 | behalf 2:6,13,20 | 106:23 107:5 |
| 54:13 55:17,22 | attorney 2:5,12 | 126:11 | 12:24 25:2 78:2 | Blair 115:10,14 |
| 56:11 57:12,15 | 2:18 137:18 | awfully 17:20 | 78:22 79:1 | 118:7 |
| 59:12 70:9 | audit 9:25 24:6 | | 111:13 112:15 | board 120:25 |
| 76:19 84:8,17 | 80:4 116:10 | B | 112:21 | 121:20,23 |
| 85:21 86:10 | audit-driven | back 6:14 15:19 | beings 71:19 | 122:4 |
| 91:10 92:5 94:9 | 88:5 | 22:12 23:21,25 | belief 104:16 | boards 122:11 |
| 108:11 110:18 | audited 116:13 | 36:11 40:18 | believe 6:23 | bold 40:25 |
| 114:3 121:24 | 116:17,24 | 49:17 51:13 | 15:11 16:3 17:3 | bonus 14:8,9,10 |
| 122:1 129:13 | 119:8,14,19,25 | 55:16 65:12 | 17:8 18:2 19:23 | 14:19,24 15:14 |
| 130:19 131:1,6 | auditor 24:3 | 67:4 68:25 | 21:13,13 22:20 | 18:5 90:21 |
| 133:1 | auditors 24:5 | 82:23 83:19 | 23:13,19 24:16 | book 33:21 34:12 |
| asking 18:11 | 88:6,14 | 84:4 85:12 | 26:13 49:9 51:1 | 34:20 |
| 20:21 28:6 | aughts 106:13 | 102:13 128:6 | 51:2 74:16 | booked 32:23 |
| 38:20 56:9,13 | August 42:16 | back-end 15:19 | 77:17 78:1,7,19 | 33:11 34:9 35:5 |
| 61:5,7 77:13 | 44:13 | 15:21 | 81:8 83:1,3 | 35:20 36:24 |
| 83:22 94:15 | authenticate 28:5 | back-ended | 86:25 102:6 | 44:23 90:8 |
| 100:9 125:18 | authenticity | 14:25 | 111:10 115:24 | 116:4,8 118:24 |
| 133:10,17,18 | 67:23 | background 4:13 | 121:11,16,22 | books 80:7 |
| 134:4 | authoritative | 53:2 70:5,6,7 | 122:1 125:14 | 110:24 111:4 |
| aspect 118:20 | 65:1,2 | backup 36:19 | believed 35:10 | borrow 78:22 |
| ass 17:18 | authority 36:9 | bad 20:12 89:15 | 57:6 113:17 | borrower 45:6,15 |
| asserted 97:7 | 77:3,13,15 78:7 | balance 49:6 | beneficiaries | 45:19,24 46:2 |
| 98:8 | 78:21,25 | 80:6,8 120:12 | 17:10,15 | 130:4,5 |
| asset 15:7 | authorization | 120:19 | benefiting 73:9 | borrower/lender |
| assets 15:3 87:10 | 108:10 | ballpark 85:24 | best 5:25 8:3 | 133:21 |
| 87:12 97:12 | authorize 77:4 | bank 36:17 99:13 | 52:15,17 55:7 | borrowing 120:7 |
| 107:12 | authorized 40:2 | bankruptcy 1:1 | 63:24 64:4 | boss 39:13 |
| assist 42:13 | 59:15 69:6,25 | 31:19 80:10 | 78:16,17 85:8 | Boston 4:15 5:8 |
| assistance 31:13 | 85:24 108:5 | 96:15 98:12 | 95:19 109:21 | 5:10 |
| assistant 6:24 7:4 | 112:20 113:15 | 102:14 104:12 | 110:6 111:9 | brain 32:9 |
| 7:7,10 8:8 | 119:4 | base 14:5,7 | 115:4 116:20 | Brandon 1:22 |
| assisted 22:23 | authorizing | based 14:11,14 | 116:25 119:9 | 137:2,25 |
| assume 28:7 29:7 | 94:20 | 32:12 37:17 | 119:16 120:4,9 | break 7:6 |
| 90:6 95:18 | Avenue 2:11,17 | 46:5,7 48:12,19 | 120:16,21 | bridge 29:22 |
| 101:21 | aware 35:6 58:24 | 54:14 104:14 | 123:20 125:6 | 30:6 |
| assumed 7:14 | 59:2,3 80:18,21 | 104:16 118:12 | 126:2 | briefly 13:5 |
| 53:3 | 96:6,10,12 | basically 6:3 | better 111:19 | bring 49:6 |
| assuming 36:14 | 97:15 100:24 | 31:13 56:1 81:5 | biggest 123:6 | broad 9:22 35:17 |
| 36:21 41:23 | 101:5,8 102:7 | basis 23:22 30:2 | bill 74:20 | 61:3 107:21 |
| 64:1 | 103:20,24 | 133:1 | bills 82:4,5,10,11 | broader 76:8 |
| assumptions | 106:6,20 | Bates 83:15 | birth 4:9 | broken 53:16 |

David Klos - October 27, 2021

| | | | | |
|---------------------------|-------------------------|--------------------------|--------------------------|-------------------------|
| brokers 10:17 | 88:12,17 93:7 | certify 137:3,17 | 98:3 | 121:20 |
| brought 6:4,14 | 93:20,21 107:6 | cetera 6:1 14:20 | closed-end 74:14 | company 81:14 |
| 31:3,7 97:15 | 107:16 109:7 | CFO 5:21,25 | closely 62:4 | 122:16,23 |
| bucks 74:25 | 111:3 129:8,10 | 8:18 48:6,21 | coach 100:11 | compel 132:18,20 |
| budgeting 6:8 | casual 134:22 | 131:25 | coaching 100:10 | compensate 72:8 |
| burn 130:20 | caught 62:5 | chain 53:5 | 100:13 | 72:12 79:14 |
| businesses 30:1 | cause 1:21 137:6 | chance 69:4 | cold 46:6 | 89:20 110:15 |
| busy 11:15,19 | 137:20 | change 8:8 16:10 | collect 81:17 | compensated |
| 128:10 | caused 79:12 | 46:10 59:1 | collected 81:19 | 17:16 110:2,3 |
| C | 81:10 | 84:13 103:25 | collectible 87:15 | compensation |
| call 6:4 11:11,13 | causes 82:9 | changed 6:18 | collecting 15:16 | 14:3,6,8,19 |
| 38:10 63:14 | Central 138:2 | 39:11 84:16 | 81:6,6 | 15:14 16:4,12 |
| 90:16 132:21 | Cert 138:1 | changes 7:1 | collection 87:25 | 16:16,21 17:4,8 |
| called 9:24 58:21 | certain 5:17 | 137:14 | collective 52:2 | 17:24 18:5 |
| 59:11 70:24 | 11:13 12:21,21 | Changing 106:23 | college 4:15 5:6 | 60:18 73:8,12 |
| 74:16 88:7 | 13:12 23:14 | characterize 54:1 | column 36:25 | 79:25 90:2,12 |
| 109:5 112:9 | 33:13 38:1 | 76:10 87:18,19 | 37:7 | 90:17 105:21 |
| calling 90:24 | 54:14 67:21 | characterized | combination | complete 15:3 |
| Calls 112:3 | 70:12 83:9 | 54:2 | 39:16 45:12 | 74:23 106:11 |
| capital 1:6,9 5:11 | 95:11 96:9 | charge 6:15 10:3 | combine 106:24 | completed 15:22 |
| 6:6 8:4 13:6 | 97:10 98:17 | chief 7:13,17,21 | Combs 1:22 | 15:25 16:2 |
| 23:22,23 26:19 | 99:14 101:1 | 8:23,23 9:3 | 137:2,25 | 74:21 |
| 26:23 27:1 29:4 | 103:22 106:18 | 10:12 13:20,22 | come 47:12 53:7 | completely 15:24 |
| 29:19 32:6,23 | 109:24 111:20 | 53:3 | 59:19 65:3,5 | 27:25 89:9,15 |
| 35:3 37:25 71:6 | 128:8 | circumstance | 76:22 101:6 | 90:7 115:17 |
| 107:2 110:8 | certainly 6:18 | 51:1 | 117:9,19 | completion |
| car 82:9 | 9:17 12:3 20:10 | circumstances | comes 133:21 | 137:12 |
| career 11:20 | 26:4 30:11 | 31:2 134:25 | comfortable 88:6 | complex 108:24 |
| careful 17:21 | 32:16 34:4 | claim 81:1,9 | coming 17:20 | 108:25 109:2 |
| carry 110:24 | 35:18 37:23,24 | claimant 15:16 | 36:13 118:9 | compliance 6:8 |
| case 43:20 86:24 | 42:11 50:4 58:8 | 18:6 | command 53:5 | 72:4 |
| 89:18 103:11 | 62:14 69:1 | clarification | commencement | comprehend |
| 105:17 124:14 | 77:13,24 86:22 | 124:19 | 112:14 126:19 | 129:20 |
| 130:2 | 101:8,10,12 | clarify 11:3 12:8 | comment 17:13 | computer 137:11 |
| cash 9:25 23:21 | 108:8 | 53:1 66:18 | commission | computerized |
| 23:24 25:23,24 | certainty 29:13 | 75:25 | 138:4 | 1:24 |
| 26:7 31:9,10,12 | 42:19 68:18 | clear 17:21 26:19 | common 30:5 | concept 89:16 |
| 31:14,16,23 | 69:8,11,24 70:2 | 27:11 29:14 | 86:5 | concern 23:23 |
| 32:8,12,14 | 102:19 103:10 | 52:24 63:9 | communicated | 24:1,2,4 56:21 |
| 41:15,24 42:12 | 103:12 108:7 | 69:15,16 73:13 | 95:12 | 56:23,25 62:17 |
| 42:23 43:5,22 | 121:16 | clearly 74:2 | communicating | concerning 17:7 |
| 43:24 44:1 | CERTIFICATE | client 133:7 | 53:9 | 63:20 |
| 57:25 61:25 | 137:1 | clients 17:25 | communication | conclude 80:25 |
| 63:2 73:20 | Certified 137:2 | Cliff 7:23 | 83:10 | concluding 24:6 |
| | 137:25 | close 17:21 33:14 | communications | conclusion 94:25 |

David Klos - October 27, 2021

| | | | | |
|--|--|--|---|--|
| 112:4,10 condition 96:4 conditional 97:11 conduct 69:18 confer 26:4 confident 69:5 confirm 59:17 61:19 confused 41:6 134:22 confusion 11:6 conjunction 24:5 connection 24:12 26:2 consent 74:16 75:23 80:2 85:15 90:3 93:16 consented 74:17 consequence 104:20 considerations 16:1 60:10 constant 75:15 construct 90:2 consultancy 11:9 11:11 contended 113:10 context 133:16 133:19 134:10 contingent 14:11 continue 17:22 100:8 110:24 continued 111:2 continuously 6:17 29:22 contract 71:10 contracted 71:15 contradict 79:18 control 43:2 90:10 controlled 89:8 controller 6:24 6:25 7:4,4,8,8 | 7:10,10 8:4,8,9 8:12,15 9:11 10:10,12 12:19 13:10,17 48:6 conversation 18:22 19:9,19 43:15 51:25 70:14 91:25 93:18 94:24 103:18 105:18 111:11,16 conversations 18:23 19:11 20:2 34:11 42:6 51:25 93:19 96:16,19,22,24 97:20,22 98:2,5 102:9,12,13 104:24 105:5,7 105:11,16,21 124:3 conversion 74:15 74:17,21 converted 74:13 conveyed 102:25 103:1 coordinated 22:21 copied 127:10 copy 135:13,16 135:18 corporate 6:5,15 9:9,15 25:22 33:8 35:9,16 39:12,13,16 43:17 61:14 62:11 70:15 73:20 84:2 109:1,6 115:1,7 115:18,20 117:25 118:3 118:16 122:20 122:25 correct 5:22,23 8:19,21 9:20 | 16:17 40:2 42:1 45:25 51:11 61:10 64:25 68:10 69:2 82:21 88:11,17 88:23 91:2 97:18 99:17 101:21,22 105:23 124:21 125:6 127:16 135:24 corrected 127:19 correctly 5:16 51:13 62:9 cost 97:13 counsel 2:6,13,19 18:10,20,25 20:3 21:16 22:21,25 23:3 96:17,20,22 97:21 98:1 137:17 couple 61:20 87:14 123:2 129:13 course 20:3 33:19 51:9 66:12 69:18 83:22 84:4,6 court 1:1 117:8 courteous 76:24 covered 20:14 53:2 CPA 4:19,22 44:21 48:6,20 49:11 131:25 CPAs 95:4 created 80:10 credit 6:8 25:9 40:11 89:13 90:11 creditors 15:17 CSR 1:23 curiosity 59:21 current 4:25 | cut 109:8 cycle 41:7 <hr/> D D 1:22 137:2 D-CNL003763 117:17 Dallas 1:3,25 2:4 2:18 4:12 5:10 138:2 damages 82:12 date 4:9 8:6 24:22 45:20 47:5,6,23 48:25 49:13,13,14 84:14 123:23 125:1 dated 114:23 137:22 dates 27:10 28:18 28:24 111:17 Davenport 138:1 David 1:14,18 4:1,6 136:5 Davor 2:5 76:22 day 29:21 32:1 34:1 59:7 74:8 93:18 117:2 135:25 day-to-day 9:17 62:6 days 59:5 76:2,7 de 127:22 dealing 29:20 128:19 debtor 26:21 32:23 38:6,22 38:23 76:16 77:3,5,8 78:2 81:1 87:14 88:16 116:22 debtor's 111:4 116:13,17 119:8 debts 89:3 | December 24:20 24:23 51:10,15 51:22 53:18 54:24 56:17,22 57:6,13,17,21 58:7,9 60:20,25 61:21 63:19 98:18,18,24 99:19 100:15 101:1 102:17 103:23 113:2,3 120:2 124:1,9 decide 38:23 39:5 90:12 decided 24:9,12 24:14,15 32:7 64:22 77:18 84:25 86:1 decides 38:22 deciding 64:15 69:18 decision 27:2 30:25 86:5 decision-making 32:10 decisions 29:8 30:9,16 declare 135:23 deduction 73:9 default 58:13,17 61:14 62:18 defendants 1:11 1:20 2:6,20 96:3,6 defense 80:15 96:3,7,13,23 97:5,7 98:1 defenses 96:10 96:18 defer 103:13,18 define 47:18,20 defined 104:8 134:21 definitely 6:21 7:12 73:6 |
|--|--|--|---|--|

David Klos - October 27, 2021

| | | | | |
|--------------------------------------|-----------------------------|---------------------------------|----------------------------------|----------------------------|
| definition 38:11 104:13,14 | determining 89:13 | 31:4,7 39:21 57:18,22 58:3,4 | 43:7,10,16,25 51:18 52:4,7,19 | 113:17,24 121:24 124:10 |
| definitive 50:11 | Dickman 138:1 | 60:1,5,8 62:20 | 53:12,15,16 | 124:11 125:4 |
| definitively 15:20 | differed 54:10 | 63:1,20 92:14 | 54:18,24 55:9 | 125:12,24 |
| degree 4:16 | difference 49:7 | 101:20 | 55:17,25 56:3 | 126:4,10,14 |
| degrees 4:14 | 76:6 | discussions 19:3 | 56:10,15 60:21 | 135:1 |
| Deloitte 5:8,8 | differences | 21:8 24:13 | 61:24 62:23 | duly 1:19 4:2 |
| demand 23:13 | 107:14 | 30:24 41:13 | 65:3,24 69:9,12 | 137:4 |
| 86:3,8 87:14 | different 30:5 | 59:22 63:22 | 70:15 74:3 76:1 | duties 9:12 62:6 |
| 88:15 127:14 | 34:15 38:21 | 103:2 | 76:13 77:2,25 | 126:21 |
| 128:2,23 | 44:11 74:9 | disinterested | 85:1,19 89:18 | duty 25:9 |
| demanded 129:4 | 77:12 99:11 | 137:8 | 90:9 91:14,17 | |
| deny 67:22 | 107:11,12,17 | dissimilar 14:21 | 91:21 92:9,14 | <hr/> E <hr/> |
| department 9:7 | 125:19,20 | dissuade 62:23 | 92:23 93:3,10 | earlier 17:13 |
| 84:9 | 128:18 132:4 | distinct 10:10 | 93:25 94:2,5 | 49:14 75:13 |
| depend 15:15 | direct 9:15 20:17 | distribution 59:9 | 95:1,24 98:11 | 98:16 101:6 |
| 17:6,9 134:11 | 20:19 34:13 | 83:5 | 98:11 101:7 | 111:13 123:3 |
| depending 31:2 | 78:13 132:3 | DISTRICT 1:2 | 104:24 105:16 | earliest 128:1 |
| 32:15 89:11 | directed 20:22 | dividend 105:8 | 105:21 112:20 | early 51:22 54:24 |
| depends 16:5 | 51:19 60:21 | DIVISION 1:3 | 113:8,14 116:6 | 60:20 87:1 89:2 |
| 134:10 | 68:19,20,21 | document 44:21 | 116:21 121:12 | 111:5,21 135:7 |
| deponent 137:14 | 69:1,3 125:23 | 46:23 50:15 | 122:9 124:8 | educational 4:13 |
| deposition 1:13 | directing 132:7 | 64:6,12 76:23 | 125:10,22 | effect 41:14 |
| 1:18 18:9,24 | 132:15 | 76:23 79:17 | 126:16 | 62:18,21 |
| 19:16,22,24 | direction 33:2 | 84:10 88:2 | Dondero's 62:11 | 129:23 |
| 20:5,9,14,16 | 34:2 35:23 | 96:15 117:5 | 73:6 76:9 77:19 | effective 125:1 |
| 21:1,7,9,12,19 | 54:15 55:18 | documents 67:8 | 78:3,21 79:3,11 | effectively 49:22 |
| 27:20 132:17 | 62:24 65:1,2 | 76:20 | 79:18 | 75:5 |
| 135:20 137:4,7 | 94:25 102:23 | doing 6:5,11 9:24 | double 81:5 | effectuate 99:13 |
| 137:12,19 | 102:24 137:11 | 25:18 85:14 | doubt 35:21 36:8 | 112:21 126:14 |
| describe 8:2 | directions 103:19 | 86:17 89:13 | dozens 65:16 | effectuated 99:3 |
| 54:11,13 | directly 103:19 | 95:2 | draft 24:16 | eight 117:13 |
| described 13:16 | disagree 89:19 | dollar 28:18 75:2 | drafted 22:21 | either 21:18 26:3 |
| 54:10 69:6 72:1 | 99:21 100:18 | 75:2 | drafting 58:17 | 26:25 29:12 |
| 87:23,24 92:2 | disciplinary 5:3 | dollar-for-dollar | DRIP 105:8 | 30:16 31:10,16 |
| 109:24 110:13 | disciplined 5:2 | 73:4 | driven 42:19 | 35:23,25 38:8 |
| 114:11 | discuss 20:4 97:2 | dollars 18:1 | drukavina@m... | 39:12 48:19 |
| describes 119:4 | discussed 15:8 | 123:9 | 2:7 | 50:12 68:14 |
| describing 33:7 | 21:16 90:1 | Dondero 2:20 | due 25:16,19 | 69:1,3,9 79:24 |
| detail 54:5 58:2 | 93:15,17 94:1 | 24:11 29:15 | 37:12,18 47:12 | 84:21 86:12 |
| determination | 97:4,6 | 30:8,19 32:7 | 49:12 51:10,14 | 105:25 125:22 |
| 60:17 | discussing 42:3 | 33:21 34:2,7,18 | 74:20 76:22 | 137:18 |
| determine 38:16 | 65:9 77:25 92:4 | 38:4 39:24 | 98:18,24 111:1 | electronically |
| determined | 92:8,11 93:3,10 | 40:10 41:14 | 111:7 112:1,6 | 84:22 |
| 40:21 | discussion 19:21 | 42:3,7,10 43:2 | 112:16 113:11 | eliminate 111:14 |

David Klos - October 27, 2021

| | | | | |
|---|--|--|--|--|
| email 2:7,14,22 54:16 59:8,9 67:14,15,18,21 69:4,7 70:13,16 82:23,25 83:7 83:10,11 114:23 115:2,5 115:13,18,23 117:7,15,16,18 117:22,24 118:4,6,12,20 119:5 127:5,7 127:10,12 128:11,20 138:3 emailed 59:11 emails 80:13 employed 122:18 employee 12:23 26:17,21,24 123:22 employees 43:11 72:2 98:8 106:7 106:12 107:8 107:20 123:16 employment 78:13 ended 120:1 ensure 23:20 enter 78:25 entered 98:11 enterprise 30:1 32:18 entire 12:9 115:17,20 entities 6:7 25:24 26:16 30:6 31:11,16 34:8 61:15 65:18,22 65:22,24 99:6 101:1 102:20 103:8 106:24 107:18,25 108:17,19,21 108:25 121:18 | entitled 17:23 18:10 20:4 entity 12:20 13:8 13:11,13 30:20 31:20 32:7,15 32:17 34:19 35:4,11 36:2 40:10 42:10 75:8,10 90:10 109:13 131:25 equal 86:6 130:22 equity 79:24 90:22 error 70:25 71:2 71:19,25 72:13 72:14,19 73:4 79:15 80:20 81:1,14 85:22 89:20 90:3,3 92:11,16,17,18 errors 71:9 72:20 72:21 73:16 especially 15:4 established 51:4 75:13 76:11,12 78:12 estate 107:13 estimate 11:22 et 6:1 14:20 event 116:17 119:10,13 120:1,7 135:6 137:19 events 16:20 96:9 eventually 32:2 evidence 80:14 111:5,9 116:20 116:25 119:9 119:16 120:4,9 120:16,21 evolved 6:18,21 exact 7:5,11 15:24 20:16 94:19 | exactly 5:18 14:24 15:23 34:3 48:2 77:23 80:16 Examination 3:3 3:4,5,6 4:3 95:21 109:18 127:1 example 31:6,9 37:6 48:25 exceeded 87:10 123:12 exception 16:8 17:1 44:2,3 excess 41:15 exchange 128:12 exclude 18:22 exclusively 23:13 33:14,14 excruciatingly 73:13 excuse 37:1 74:25 executed 24:18 31:1 70:22 84:3 124:24 execution 22:7,13 22:20 24:23 83:21 84:19 85:6 executive 26:14 exhibit 22:4 23:8 27:9,15,23 36:12 40:20 42:17 44:13,22 46:12 48:12 49:1,10 64:2,5 67:17 68:4 82:24 83:20 114:1,22 127:2 129:12 exhibits 3:10 67:2,7 68:1 existing 7:13 23:13 expand 59:7 | expect 17:12 64:12 65:4 83:12 86:21 expectation 15:1 expected 126:13 expenses 73:7 experience 5:5 37:18 38:14 46:19 49:11 104:16 130:2 expert 82:21 87:6 expertise 48:20 expires 138:4 explain 8:22 64:13 107:1 explaining 92:25 explore 12:12 express 14:19 Expressway 138:2 extended 7:12 extending 14:17 extent 31:10,12 60:24 61:8 66:10 86:23 135:7 extrapolating 92:24 <hr/> F <hr/> FA 88:7 face 71:16 facile 15:24 facilitate 25:18 31:15 facility 6:8 fact 29:6 58:23 58:23 76:14 79:21 94:23 101:9 112:19 128:20 failed 58:18 failure 126:20 fair 16:15 35:8 60:9 65:15 | 91:16 97:14,23 99:1,15 104:17 105:15,20 115:16 123:20 fairly 9:22 30:4,5 84:7 fall 80:10 121:20 familiar 21:23 22:5,6 28:1 67:1 82:15 104:1 114:17 116:13 119:21 far 5:1 24:15 37:5 58:23 62:6 84:11 87:9 fault 81:10 faulty 43:3 February 80:19 113:10 126:8 126:12 fee 74:16,18 75:23 80:2 85:15 90:3 93:16 feel 54:5 69:5 feels 35:17 82:22 fight 53:17 file 80:11 final 30:9 financial 8:23 13:20,22 87:20 116:14,17,24 119:8,14,19,22 119:25 financials 122:1 122:4,7 find 26:13 31:15 67:14 129:17 fine 21:10 39:3 90:21 106:25 FINRA 4:21 firm 95:23 first 4:2 37:2,4 42:22 46:14 48:14 49:5 50:7 |
|---|--|--|--|--|

David Klos - October 27, 2021

| | | | | |
|---|--|--|---|--|
| 72:14,19,19 75:14 96:2 110:20 131:15 five 105:3 126:25 flag 10:4 flavoring 63:14 flight 132:10 flip 37:1 flipped 9:20 Floor 1:25 2:11 flow 23:21,25 26:7 88:17 96:15 focus 8:14 65:10 focused 6:7 follow 16:18 follow-up 128:17 followed 116:11 follows 4:2 forecast 126:3 129:10 forecasting 6:8 forecasts 9:24 44:1,4 126:3 129:9 foregoing 135:24 137:4 foreign 89:15 forgave 123:15 forget 86:7 forgetting 9:8 forgive 123:22 forgiven 96:8 106:7,16,17,20 122:19,24 123:11,11 forgiveness 97:10 97:17 122:14 forgiving 123:7 form 6:16 8:25 11:17,24 12:25 14:12 21:24 22:8,15 23:10 25:3,11 27:4 29:10 32:25 | 33:24 34:21 35:13 36:4 37:20 38:17,25 39:7 40:3,14 42:24 43:19 44:16,24 45:9 45:17 46:21 47:8,15 48:8,22 49:15 50:13 51:5 52:21 53:22 54:7 55:3 55:12,19 57:8 60:12 61:1 63:5 64:9 65:19,25 66:7,15 69:20 71:3,12,20 76:18 77:6,20 77:23 78:4,23 79:5,19 81:2,11 81:23 82:6,13 84:11,12 87:3 88:18 89:5 90:14 91:3,9 93:13 94:8 95:5 99:4,23 100:19 101:3,25 102:15 103:15 104:18 108:2 128:13 130:7 130:16 131:11 131:21 133:13 133:22 134:8 134:17 135:2 found 61:18 foundation 113:20 125:17 four 6:13 128:23 frame 4:24 7:11 7:12 8:10,14,24 12:6 20:12 24:8 25:1 66:12,20 67:16 106:13 123:18 Frank 8:17 11:1 20:9 29:13 | 30:15,17 35:23 35:25 36:10 44:7 52:1 53:7 53:8 54:15 55:9 60:20 61:14 68:14,14 69:1,3 70:13,14 77:13 77:15 80:12,13 93:6 101:7,18 101:23 102:3,4 102:8,9,11 121:22 127:19 Frank's 39:18 Frankly 48:10 fraud 81:5 frequent 84:1 Friday 118:1 front 10:17 44:8 67:20 68:5 72:3 full 57:3 106:18 full-service 107:5 full-time 12:3 function 72:2 fund 1:9 6:11,11 9:5,5 13:6 70:24,25 71:1,6 71:7,8 72:8 73:15 74:11,12 74:13,13,14,17 75:2,6 80:20,23 81:16 86:5 109:3 funds 10:21,22 12:13 29:9 30:2 30:19 31:20 34:8 35:11 75:24,24 76:1 80:9 85:14 128:19 further 3:6 24:19 84:18 126:24 127:1 135:10 137:17 future 17:4 45:16 49:13,20 53:17 | 93:7 <hr/> G <hr/> gearing 53:17 gears 65:8 general 18:13,15 19:9,10 20:11 20:13 32:20 33:19 61:4 92:11 93:4 96:24 97:6 104:4,5 108:20 133:24 134:6 135:4 generally 19:25 27:24 30:4 32:21 38:4,4 40:2,11,16 42:15 45:8 77:22 96:5,10 96:12,17 98:20 105:1 107:1 108:18 110:22 116:15 119:21 generallys 40:6 generating 42:12 Germans 63:14 getting 10:4 23:24 44:8 51:13 59:8 give 5:21,24 14:4 16:13 39:3 67:25 given 15:5 43:2 43:22 47:23 70:12 73:21,22 74:1 102:8 123:3 129:2 global 52:25 70:24 74:12 75:6 101:13 go 15:19 16:1 20:1 43:6 54:4 65:12 81:9 82:18 85:10 | 105:24 127:2 134:4 goes 28:9 40:18 87:9 going 14:2 15:5,6 16:9,12,15,19 17:5 20:19 28:17 32:10 36:11,12 42:22 46:11 49:13 55:16 57:11,14 62:18 65:8,9,10 65:12 68:1 70:5 74:22 79:9 82:23 83:11,19 88:7 89:20 106:23 107:17 108:20 111:17 117:5 118:13 127:6 129:12 132:4,13 134:11 good 73:20 95:22 96:1 100:12 grad 5:7 graduate 4:14,15 group 5:19 6:11 6:16 9:9,14,15 9:21 10:7,9,14 10:15,24 11:7 35:9 43:18 61:21 62:10,11 83:5 109:3 110:24 115:2,5 115:18,21 117:25 118:16 126:8 groups 6:19,20 guess 8:8 88:24 104:21 <hr/> H <hr/> half 5:9 94:20 95:11 110:20 half-million |
|---|--|--|---|--|

David Klos - October 27, 2021

| | | | | |
|------------------------|-------------------------|--------------------------|-------------------------|--------------------------|
| 123:9 | 121:7 127:13 | held 6:16 10:20 | 41:2,2,12,16,24 | 28:5 30:10,11 |
| hand 90:9 | 127:17 128:1 | 121:10,12 | 42:5,20,22 43:6 | 33:13 68:18 |
| handled 11:9 | 128:23 | 122:20,25 | 43:7,9,10,12,16 | 69:5,11 92:3 |
| 26:21 35:9 40:8 | HCMFA's 70:23 | hell 74:24 | 44:5 49:11 | 102:19 106:18 |
| handles 11:7 | 119:25 | help 33:2 65:22 | 50:19 51:2,4,19 | hundreds 65:16 |
| hands 57:2 | HCMLP 10:21 | 66:20 67:16 | 51:20 58:13,21 | |
| happened 35:25 | 29:4 42:20 60:2 | 100:4 | 59:9 64:24 | I |
| 47:13 59:2,4 | 68:8 71:17 72:2 | helped 105:9 | 65:18,21 70:24 | idea 7:24 57:10 |
| 93:8,11 | 72:2,23 76:2 | helping 31:14 | 71:6,11 72:7,10 | 89:12 108:13 |
| happening 27:14 | 80:1 94:1 104:8 | Hendrix 9:16 | 74:12,25 75:8 | identified 72:25 |
| happens 47:13 | 109:24 110:3,4 | 18:16,19,24 | 75:10,12,14,23 | illiquid 11:13 |
| happy 55:22 | 110:12,15,16 | 20:3 27:19 | 75:24,25 76:4,5 | important 44:6,7 |
| hard 15:4 18:1 | 113:15 115:8 | 39:13 52:11 | 76:12 79:8,25 | 59:18,20 93:22 |
| 26:13 47:20 | 118:8,13 | 84:17 99:2,18 | 80:2,7 81:18 | importantly |
| 63:7 71:5 | 121:25 122:8 | 100:14,25 | 84:9 88:14 89:1 | 85:15 |
| 134:12 | 125:11,23 | 103:3,14 | 89:4,12 90:4,5 | impossible 80:24 |
| harder 11:13 | 126:20 128:1 | 117:25 124:4 | 90:22 92:19,22 | 91:25 |
| HARDT 2:3 | HCMS 2:20 | hereof 48:16 | 93:23 97:11 | impression 52:24 |
| HARR 2:3 | 95:24 98:23 | hereon 48:15 | 104:11 105:22 | in-house 23:3 |
| hat 43:15 | 99:8,10 107:3,4 | hereto 137:16 | 106:6 107:2,24 | inappropriate |
| hate 57:1 97:4 | 107:5 109:21 | hesitate 64:17 | 109:22 110:8 | 81:20 |
| Hayley 83:21 | 109:25 110:3 | hesitating 106:16 | 112:20 119:12 | inartful 77:16 |
| 118:10 | 124:22 | hey 42:23 85:9 | 122:19,19,23 | incidental 128:21 |
| HCM 76:16 | HCRE 2:20 | hierarchy 10:25 | 123:7,14,21 | include 52:18 |
| HCMFA 13:6 | 95:24 98:23 | high 105:5 | 125:4 126:14 | 107:25 |
| 53:20 65:10 | 99:8,10,21 | Highland 1:6,9 | Highland's 42:13 | included 85:12 |
| 68:8 71:10,17 | 100:17 107:3 | 5:11,12,14,22 | 51:9 72:13,14 | 115:5 116:16 |
| 72:8,8,12,12,24 | 107:11,20 | 6:6 7:25 8:4,12 | history 62:2 | 116:23 118:3 |
| 73:3,5,7,14,17 | 108:6,12,22 | 8:16 10:14,18 | 116:3,7 118:22 | 119:8,13,25 |
| 73:21 74:10,24 | 110:6,7,10,12 | 10:20 11:23 | 119:2,12 120:5 | 120:7,12,19 |
| 75:1,1,21 76:11 | 110:15 124:20 | 12:6,8,9,23 | 120:17 | 122:5,7 126:3 |
| 76:16,17 78:14 | he'll 94:14 | 13:4,5,14,17,18 | hit 82:3 | including 79:14 |
| 78:22 79:1,13 | head 62:15 | 13:21 14:3,22 | hits 82:9 | 115:17 |
| 79:14 80:2,20 | 107:10 | 15:2,15 16:5,6 | HMS 99:21 | inconsequential |
| 80:22,25 81:15 | headers 36:25 | 17:5,6 23:2,21 | 100:17 | 127:23 |
| 85:16 87:2,5,9 | hear 52:4 113:8 | 23:21,22,23 | hold 4:18 121:15 | incorrect 55:5,6 |
| 87:15 88:10 | heard 30:17 | 25:2 26:17,18 | honestly 58:22 | 55:11 |
| 89:2,3,12,13,20 | 62:16 74:3 | 26:19,23,25 | hope 43:20 82:7 | INDEX 3:1 |
| 90:17,21,23 | 91:14,17,21 | 28:2 29:4,18,20 | hopelessly 53:16 | indicate 44:22 |
| 91:23 92:19,20 | 122:22 125:18 | 29:24 31:12,17 | Houlihan 71:23 | 80:7,16 |
| 93:16,21,23 | hearing 101:10 | 32:6,23 33:3,4 | hours 11:22 12:6 | indicates 135:5 |
| 110:2 115:8 | hearsay 79:17 | 33:7 34:7,19 | 12:7,10 | individual 31:8 |
| 118:8,13,14 | heavy 107:13 | 35:3,4,10 36:2 | housed 72:2 | 52:2 72:24 |
| 119:18 120:6 | hedge 6:11 30:15 | 36:24 37:10 | human 71:19 | individuals |
| 120:11,18,24 | 33:12 | 39:22 40:22 | hundred 23:14 | 106:19 123:3 |

David Klos - October 27, 2021

| | | | | |
|--------------------------|---------------------------|--------------------------|-------------------------|------------------------|
| inflow 59:8 | 103:22 | 105:17 108:1 | 100:10 | 99:12 100:8 |
| info@dickman... | insulting 132:5 | 113:12 124:13 | keeper 26:15 | 101:10 102:25 |
| 138:3 | 133:6,9 | issued 124:16 | keeping 129:1 | 104:13,13,20 |
| informal 83:25 | insurance 80:20 | issues 75:15 | kind 10:25 14:23 | 105:12 106:11 |
| 105:14 | 80:22 81:5,6,9 | 79:23 121:6 | 15:25 52:12 | 106:14 108:7,8 |
| informally 62:5 | 81:14,19 82:4 | <hr/> | 89:7 99:13 | 110:2,3 112:23 |
| information | 82:10,19 | J | 106:12 108:22 | 117:11 119:7 |
| 59:16 129:1 | intended 44:15 | Jack 106:15 | 108:23 109:8 | 119:18 120:11 |
| informed 62:10 | 44:19 111:6 | January 29:16 | Klos 1:14,18 4:1 | 121:12,23 |
| 102:3 | 130:3 | 42:16 44:13 | 4:6 61:24 64:22 | 123:17 127:23 |
| inject 90:22 | intent 95:12 | 58:11,15,25 | 95:22 109:19 | 129:6 130:10 |
| ink 84:23 | interco 68:8 | 59:23 60:2,23 | 117:21 136:5 | 130:18 131:23 |
| insinuation 16:9 | 115:22 | 61:7,18 112:22 | knew 70:6,11 | knowing 102:23 |
| 17:1 | intercompany | 113:3,16 | 85:22 128:23 | knowledge 7:24 |
| insolvent 87:2,6 | 32:22 41:3 | Jim 2:20 24:11 | 129:3 | 13:8,10 24:13 |
| installment | 65:17 68:9,11 | 26:4,4 29:13,14 | know 4:19 5:1 | 34:6 35:1 44:14 |
| 110:25 111:7 | 68:12 69:10 | 30:17 31:9 34:2 | 9:22,23 10:19 | 48:20 49:10 |
| 112:1,8,16 | interest 37:4,8,13 | 34:6 35:23 36:1 | 11:11 12:7,19 | 60:25 61:16 |
| 113:4 114:7,12 | 37:15 38:9 | 36:9 44:8 53:16 | 15:6,13 17:10 | 63:24 64:5 67:6 |
| 125:12,23 | 40:12 45:12 | 68:14,18 69:1,3 | 18:7,8,11 19:10 | 73:1 79:17 |
| 126:4 131:3,10 | 46:8,8,16,20,25 | 70:15 80:5 89:9 | 20:4 23:7,17 | 98:10 100:6,9 |
| installments | 47:1,4,4,11,12 | 93:25 94:2 97:9 | 24:1,7,9,12,15 | 104:10 109:21 |
| 14:22 130:23 | 47:13,14,18,19 | 101:18 105:22 | 25:5,7 28:21,23 | 110:7 112:23 |
| instance 1:20 | 47:20,21,24,25 | 108:20,21,23 | 29:6 31:11,13 | 121:19 122:10 |
| 31:20 34:11,16 | 48:4,5,7,15 | 118:9 121:22 | 31:23,25 32:3,7 | 123:10,21 |
| 34:18 35:25 | 49:4,6,12,12,20 | Jim's 26:15,16,20 | 35:15 37:25 | 125:10 |
| 39:22 42:22 | 49:23 50:9,21 | 26:22,24 36:7 | 38:11,12,19 | known 61:9 |
| 68:24 86:22 | 51:3 86:2 111:3 | 90:7 93:6 94:19 | 39:9 40:20 | 69:23 70:1 |
| instances 32:5 | 131:15 | 108:21 | 43:16,21 44:18 | KOPF 2:3 |
| 65:16 71:8 91:5 | interested 83:13 | jmorris@pszjl... | 45:4 48:10 | Kristin 9:16 |
| institutional 9:5 | 137:19 | 2:14 | 51:16,25 53:1 | 18:16 39:13,17 |
| instruct 115:7 | internal 22:21,25 | John 2:12 36:16 | 53:17,25 54:20 | 52:1 53:7,8 |
| instructed | internally 96:16 | joined 5:14 29:24 | 54:20 55:14 | 59:11 61:13 |
| 125:11 | investment 74:19 | 122:23 | 60:14,19,22 | 62:4,15,15 83:1 |
| instructing 85:9 | investments | JONES 2:10 | 62:13 70:10 | 83:2,20 99:14 |
| 133:2 | 107:16 | judge 132:21 | 73:17 76:14 | 101:7,24 102:3 |
| instruction 52:25 | investors 74:17 | juggled 31:24 | 77:23 78:20 | 102:5,8,10,11 |
| 61:13,24 62:12 | 75:5 | July 29:17 58:24 | 81:4,21,25 82:2 | 108:5,8,12,14 |
| 62:17 99:19 | involved 10:7 | jumble 48:1 | 82:4,8,19 83:11 | 109:10 117:25 |
| 101:6,13,17,23 | 25:14,24 60:17 | June 11:21 45:23 | 84:6,25 85:17 | 118:15 119:3 |
| 102:3,5,8,20 | iota 16:13 | 45:24 49:2 | 85:18,20 86:1,4 | Kristin's 100:6 |
| 103:7 124:7 | irrespective | <hr/> | 87:6,17 90:18 | 100:22 118:20 |
| 125:15 | 90:11 | K | 90:19,25 91:5 | <hr/> |
| instructions | issue 29:18 36:20 | K-l-o-s 4:7,8 | 91:13,16 93:19 | L |
| 100:15 103:14 | 43:7,8,17 93:10 | keep 27:21 | 96:14 98:21 | L.P 1:6,10 |
| | | | | <hr/> |

David Klos - October 27, 2021

| | | | | |
|--|--|--|--|---|
| lacks 113:19 125:17 | level 23:20,24 36:6 82:15 | 68:16,21 69:10 69:15,17,19,24 | looked 111:20 | 25:23 |
| land 132:21 | 88:14 105:5 | 70:2,10 73:14 | looking 22:3 44:1 117:17 | March 5:12,14 6:3 13:24 37:6 |
| language 74:25 | liabilities 87:10 | 74:2,4,7 76:15 | looks 27:25 39:6 | 80:19 122:17 |
| large 55:2 59:8 59:13 93:20 131:25 | 87:12 122:8 | 76:21 78:3 | loop 53:9 | marching 52:3 |
| larger 41:7 58:3 | liability 120:12 120:19 | 79:13,24 85:18 85:20 89:21 | lost 41:21 63:16 | marked 3:10 |
| largest 123:8 | liaison 10:15 11:5 | 90:10,13 91:2,6 92:3,15 95:4 | lot 100:1 129:20 | Master's 4:16 |
| late 106:13 | liberally 12:8 | 107:25 110:19 | loud 118:6 | material 15:7 |
| launching 10:3 | license 4:20,22 | 115:22 116:4,8 116:16,23 | LP 6:6 8:5 12:14 12:15,17 13:6 23:22 26:19,24 29:5 110:8 | matter 109:11,12 |
| Lauren 23:2 | licenses 4:18 | 117:3 118:8,10 118:11,13,17 | lying 79:16 | matters 26:22,24 |
| law 2:5,12,19 81:22 82:1,9,16 82:22 95:23 | life 131:18,19 | 118:25 119:4,7 119:14 122:14 | <hr/> M <hr/> | maturity 131:20 |
| Lawler 106:17 | limited 104:7 | 123:6,10,14,22 | machine 1:24 | MBA 4:17 131:25 |
| Lawn 2:17 | lines 5:18 | loaning 72:7,11 89:1 92:19,22 | magnitude 92:12 | mean 9:18 15:21 24:10 26:9,11 104:6 114:18 |
| lawsuit 112:14 | linked 92:15,17 | loans 32:4 33:14 36:9 40:8 65:17 66:3,5 80:7 84:1 85:10 89:10 90:8 91:12,14,23 94:1,7,22 95:2 98:17,22 | maintained 28:2 | meaning 51:4 68:9 |
| lawsuits 97:15 | liquidity 29:4,5 29:18,20,23 30:7,21 31:21 31:25 32:6,22 33:9 34:20 35:19 36:2 40:7 42:13,20 43:7,8 43:17 73:2,14 73:18 74:10 75:1,15,22 | Lokey 71:24 | maker 46:15,23 47:1 50:8 114:12 122:20 122:25 129:18 129:24 | means 47:4,12 48:21 63:12 84:7 132:1 133:12,20 134:7 135:7 |
| lawyer 23:4 82:21 | list 59:10 106:12 109:9 | 106:19 107:25 108:1 119:24 120:8,12,19 123:2 | makers 126:13 126:19 | meant 50:12 |
| leading 65:17 | litigation 15:5 16:6,11 18:1,25 19:21 126:19 | logically 42:15 69:18 | making 71:8 75:18,19 85:12 99:20 100:16 107:20,23,25 108:9 126:9 132:20 | medical 82:3,10 82:10 |
| learn 30:25 51:21 51:23 58:6,6 | litigations 17:7 | long 15:8 16:5 17:5,9 34:25 43:5 62:4 84:12 122:16 | man 17:23 128:10 130:20 | meet 31:14 33:8 73:2 |
| learned 61:6 | little 9:2 12:12 14:2 30:15 33:12 39:3 48:1 98:15 106:23 107:5 | look 15:19 27:15 38:15 39:4 66:19 114:15 117:10,22 134:3,15,19 | manage 32:2 | meeting 52:12 57:25 |
| learning 58:20 | live 4:11,12 | | managed 10:21 10:21 70:24 | meetings 25:24 43:5,24 62:1,3 63:2,19 |
| left 7:14,20 46:8 46:9 109:20 | LLP 2:17 | | Management 1:6 1:9 5:12 6:6 8:5 13:6 23:22,24 26:19,23 27:1 29:4,19 32:6,24 35:3 71:6 107:2 110:8 | Melissa 26:10,12 108:14,17,18 109:1,5,9 |
| legal 18:10,20 84:9 112:3,10 130:9 | loaded 16:22 | | manager 7:2,3 | member 62:14 |
| legally 82:19 84:10 | loan 9:6 28:1 33:11,21 34:9 34:13,20 35:12 36:1 39:25 40:1 41:9 68:11,13 | | managing 9:25 | members 10:17 |
| length 19:24 124:2 | | | | memory 27:8 28:17,19 42:16 42:18 50:23 68:15 71:18 85:8 87:13 91:20 92:4,7 93:9,12 |
| let's 8:14 12:12 18:22 21:21 24:19 27:7 28:6 61:7 66:19 68:24 81:17 103:25 109:19 122:14 123:25 | | | | |
| letter 14:15,17 58:13,17 | | | | |
| letters 80:5 | | | | |

David Klos - October 27, 2021

| | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------|
| mental 48:1 | minutes 39:21 | 45:9,17 46:21 | mouth 36:7 | negative 37:7 |
| mention 10:6 | 105:25 126:25 | 47:8,15 48:8,22 | Move 120:15 | 44:4 |
| 114:7 | misconstrued | 49:15 50:2,13 | 125:16 | negotiation 22:7 |
| mentioned 12:13 | 134:23 | 51:5 52:21 | moved 6:10 | 22:13,18 |
| 61:20 88:13 | missed 60:25 | 53:22 54:7 55:3 | muddy 43:14 | neither 93:23 |
| 98:7 107:23 | missing 107:10 | 55:12,19 56:11 | MUNSCH 2:3 | never 18:2 56:25 |
| 108:4 110:6 | mistake 80:12 | 57:8,19 60:12 | mutual 74:13,14 | 72:25 74:3 |
| 116:10 | 126:8 127:21 | 61:1 63:5,13 | | 78:12 80:13 |
| met 31:9,25 | 127:23 128:4,7 | 64:9 65:19,25 | N | 91:14 105:15 |
| Michael 2:18 | MLP 59:9 | 66:7,15,24 | name 4:4 26:11 | 105:18,20 |
| 95:16,23 | moment 32:12 | 67:17 69:20 | 26:14 39:10 | new 2:11 7:16 |
| 135:11 | 67:16 73:21,22 | 71:3,12,20 | 87:21 95:23 | 26:11,13 68:8 |
| michael.aigen... | 116:6 122:15 | 76:18,22 77:6 | names 106:14 | 68:11 85:10 |
| 2:22 | monetization | 77:20 78:4,23 | Nancy 104:24 | 115:22 118:8 |
| mid 112:21 | 15:2 | 79:5,19 81:2,11 | 105:16,21 | 132:21 |
| middle 6:10 80:4 | monetizing 97:12 | 81:23 82:6,13 | nature 10:1 70:4 | NexBank 124:16 |
| 108:22 | money 15:17 | 83:13,17 85:21 | 70:6,7,11 84:1 | NexPoint 10:4 |
| million 18:1 | 33:3,3,7 34:19 | 87:3 88:18 89:5 | NAV 70:25 71:2 | 12:13,14,14,17 |
| 21:22 28:13,14 | 39:22 41:12,16 | 90:14 91:3,9,19 | 71:8,19,25 | 12:24 13:3,16 |
| 28:14 45:25 | 42:4 45:20 | 92:5 93:13 94:8 | 72:19,20,21 | 21:21 26:3 27:1 |
| 46:3 49:1,8 | 59:13,19 70:4 | 94:13,16 95:5 | 73:4,15 79:14 | 27:12 36:22 |
| 58:25 68:7 69:2 | 72:11,12 73:5 | 95:16,20 99:4 | 80:20 81:1,14 | 37:11,19 40:22 |
| 70:7,19,23 72:7 | 75:12 76:11,12 | 99:23 100:5,11 | 85:22 89:20 | 41:3,15,15 42:4 |
| 73:18,25,25 | 76:13 79:24 | 100:19 101:3 | 90:2,3 92:11,16 | 42:9,11,17,22 |
| 74:7,8,24 75:4 | 92:19,22 | 101:25 102:15 | 92:17,18 104:2 | 43:11,13 53:19 |
| 75:9,22,23 76:3 | 113:24 120:8 | 103:15 104:18 | 104:10 | 56:21 57:6,10 |
| 76:19 77:4,10 | month 11:22 12:6 | 108:2 109:19 | necessarily 31:25 | 57:14,18,23 |
| 77:11,18,18 | months 6:13 19:6 | 111:11 112:7 | 50:11 53:4 | 58:17,25 59:12 |
| 78:3,10,22 | 59:5 75:14 | 112:13 113:22 | 69:12 107:14 | 59:24 62:18 |
| 79:12,22 80:2 | morning 36:16 | 116:21 117:2,9 | need 29:18 31:16 | 63:3,20 64:8 |
| 80:19 81:18 | Morris 2:12 3:5 | 117:13,16,21 | 33:12 37:3 | 65:9 72:22,24 |
| 82:25 85:4,18 | 8:25 11:17,24 | 119:11,18 | 41:24 54:5 | 75:17,19 78:13 |
| 85:20,23 86:13 | 12:25 14:12 | 120:5,11,17,23 | 58:14 73:3 93:7 | 110:19 111:14 |
| 89:2 90:17,20 | 17:20,25 20:17 | 125:18,21 | 93:20,21 | 111:22,25 |
| 90:22,24 91:22 | 20:21,24 21:2,8 | 126:24 128:13 | 106:25 107:4 | 112:15 113:3 |
| 91:22 92:8,15 | 21:24 22:8,15 | 129:12 130:7 | needed 30:3 | 113:10,15 |
| 93:3 115:8 | 23:10 25:3,11 | 130:16,19 | 31:10,12 32:6 | 120:24 124:18 |
| 116:3,23 118:8 | 27:4,16 29:10 | 131:1,5,11,21 | 35:19 41:12 | NexPoint's |
| 118:9,13,24 | 32:25 33:24 | 132:2,8,11,15 | 73:5,17 74:10 | 110:25 111:6 |
| 119:7,14,25 | 34:21 35:13 | 132:19,23 | 74:25 75:21 | 112:21 |
| 122:5 | 36:4,18 37:20 | 133:3,5,13,22 | 76:11 | night 36:17 |
| mind 36:8 56:20 | 38:17,25 39:7 | 134:8,17 135:2 | needing 29:5,22 | nomenclature |
| 76:9 100:2 | 40:3,14 41:17 | 135:10,13,15 | needs 29:4 31:14 | 83:24 |
| mine 24:1 | 41:20 42:24 | 135:19 | 33:9 34:20 40:7 | nominal 62:1 |
| minus 127:22 | 43:19 44:16,24 | motion 132:18,20 | 42:20 44:9 | nonstop 44:5 |

David Klos - October 27, 2021

| | | | | |
|---|--|--|--|--|
| North 1:24 2:3 138:2 NORTHERN 1:2 note 21:22,23 22:2,5,7,14,22 23:9,15 24:10 24:18,21,23 25:2,9,17 27:2 27:9,13,14 33:17 38:15 39:4 40:11,13 40:17 46:12,16 46:25 48:5,14 49:10 50:25 51:10 57:18,23 58:4,20 59:12 60:7 63:4,21 64:8 65:9 66:6 66:10,13 70:22 75:18,20 76:7 79:1,22 82:25 83:21 84:3,9,16 84:16,18,19 85:4 86:2,3,3,8 86:13 89:15 92:15 111:22 112:9,12 113:16 122:19 122:24 127:13 127:14,17 128:16 130:3 131:18,20 133:12 134:3,4 134:11,15,20 notes 16:7 17:7 19:25 23:13,14 26:3 36:19 40:21 50:19 52:18 65:10 66:20 67:12 76:1 84:14,22 85:2 86:12 87:14,24 88:7 88:10,15,16 96:8 97:11,16 | 114:21 122:5 122:12 124:10 124:11,13,24 125:4,7,8,13,25 126:10,13,20 127:17 128:23 129:7 130:12 130:15 Notwithstanding 110:23 111:25 November 54:4 63:18 124:8 137:22 number 12:2,10 14:10 22:4 23:19 27:16 28:9 75:3,4 numbered 1:21 27:19 numbers 14:4,19 28:6 44:4 81:18 nutshell 54:12 NY 2:11 <hr/> O <hr/> o0o-- 1:4 Oak 2:17 oath 97:6 106:4 object 50:2 100:8 objected 118:20 objection 8:25 11:17,24 12:25 14:12 20:17 21:2,24 22:8,15 23:10 25:3,11 27:4 29:10 32:25 33:24 34:21 35:13 36:4 37:20 38:17,25 39:2,7 40:3,14 41:17 42:24 43:19 44:16,24 45:9 45:17 46:21 47:8,15 48:8,22 | 49:15 50:13 51:5 52:21 53:22 54:7 55:3 55:12,19 56:11 57:8 60:12 61:1 63:5 64:9 65:19 65:25 66:7,15 69:20 71:3,12 71:20 76:18 77:6,20 78:4,23 79:5,19 81:2,11 81:23 82:6,13 85:21 87:3 88:18 89:5 90:14 91:3,9,19 92:5 93:13 94:8 95:5 99:4,23 100:19 101:3 101:25 102:15 103:15 104:18 108:2 111:9 112:3,10 113:19 116:20 116:25 119:9 119:16 120:4,9 120:15,21 125:16 128:13 130:7,16 131:5 131:11,21 132:2 133:13 133:22 134:8 134:17 135:2 obligated 122:12 obligation 25:25 80:1 110:25 111:6,14 112:16 113:11 113:17 114:12 obligations 45:21 121:24 obligor's 33:8 obviously 85:18 occur 55:8 96:9 occurred 47:5 61:17 70:25 | 72:20,25 85:13 92:13 112:24 October 1:15,21 31:18 80:11 120:24 127:11 128:22 129:3 offended 17:22 offer 14:15,17 offhand 84:16 office 5:10,10 10:17 72:4 121:10 officer 7:14,17,22 8:23,24 9:3 10:13 13:21,22 53:4 121:6,13 123:22 officer-level 7:25 13:18 officers 105:22 106:7 121:18 123:15 official 12:16 13:7 oftentimes 32:3 Oh 100:12 okay 18:14 20:8 51:8,16 52:10 65:13 74:1,7 76:25 81:21 82:23 84:4 93:9 100:3 110:18 110:23 112:25 117:2 119:11 120:23 124:7 125:8 126:2 132:19 old 106:22 one-page 84:11 oOo-- 135:22 open-end 74:13 open-ended 25:6 operate 29:5 operations 9:6 107:19 | opinion 44:6 opposed 40:22 42:9 75:8,10 85:1 86:3 89:20 90:12 102:20 103:8 127:17 oral 96:4,7,23 97:8,15,22 98:1 98:5,12 order 27:21 124:9 orders 52:3 ordinary 128:11 organization 72:4 original 27:12 originated 43:9 ought 62:23 outlook 44:2 outside 11:9 128:11 outstanding 38:8 45:22 46:9,10 47:1,19 49:5 125:3 129:2 overall 10:10 30:6 overpayments 53:19 55:2 oversaw 9:17 overseeing 9:14 9:14,21 oversight 6:20 9:4,8 oversimplify 32:11 owed 94:1 owes 45:19 owing 113:24 121:25 <hr/> P <hr/> P 37:25 P.M 1:22,22 135:21 |
|---|--|--|--|--|

David Klos - October 27, 2021

| | | | | |
|--|--------------------------------------|--|---|--|
| PACHULSKI 2:10 | 61:23 68:16 119:5 | 68:20 72:16,18 75:1,5 76:16 | people 51:19 71:22 72:3 | petition 123:23 |
| package 83:18 | particularly 35:22 71:23 | 85:13 89:10,14 | 95:10 103:18 | phrase 51:3 97:4 |
| page 3:2 28:8 37:2,2 114:15 | parties 71:23 137:18,21 | 92:20 93:22,24 | people's 26:1 57:2 | physical 85:5 |
| 130:1 | Partners 2:21 99:9 | 93:25 99:13 | percent 15:25,25 23:14 28:5 | physically 22:23 66:14 |
| pages 20:16,25 117:13 | partnership 104:8 | 110:25 111:7 | 30:10,11 33:13 | pick 45:20 48:25 109:20 |
| paid 14:11,20 76:3,4,6 80:19 | parts 72:4 | 112:1,5,7,9,11 | 36:8 68:18 69:4 | piece 15:20,21 |
| 80:22 81:16 | party 71:7 102:22 | 112:15,16,21 | 69:5,11 74:18 | pin 8:6 |
| 85:16 135:7 | pass 95:15 135:9 | 113:4,11,15 | 74:22 92:3 | place 33:20 35:2 66:13 137:8 |
| paper 85:10 118:11 119:4 | passing 98:7 | 126:21 129:19 | 102:19 106:18 | Plaintiff 1:7 2:13 |
| papered 33:16 66:6 68:21 | pattern 66:12 109:11 | payments 25:8 25:10,16,18,19 | perception 53:14 | plan 14:22,23,25 17:11 |
| papering 84:19 85:5 118:17 | pause 7:7,16 63:13 | 27:8,11,13 | perform 126:21 | plane 82:7 130:21 |
| paragraph 50:8 114:4,7,10,11 | pay 47:1 49:14 49:24 74:25 | 36:13,14,19,22 | performed 71:24 | platform 10:20 12:10 |
| 114:16,17 | 82:5 88:8,10,12 | 36:24 37:13 | performing 9:25 | play 15:6 64:15 |
| 129:15 | 90:20 103:22 | 39:15,18 40:20 | period 23:16 93:5 104:2,11 | please 4:5 5:5 14:5 30:22 |
| pardon 46:14 | 103:22 112:16 | 40:21 41:5,6,8 | 104:21 116:14 | 66:18 68:7 |
| parentheses 118:9 | 113:23 122:12 | 41:12,24 42:17 | 120:1 137:15 | 83:21 95:20 |
| part 13:14 17:4 25:22,23 30:23 | payable 14:23 74:18 93:16 | 44:12,23 45:3 | perjury 135:23 | 114:1,22 |
| 46:15,24 58:2 | 125:4 | 48:14 51:19 | person 7:19,20 7:21 9:17,18 | 115:14 118:6,7 |
| 61:21 62:6 70:3 | paygrade 60:11 60:14 | 52:20 55:9 56:1 | 39:9,10 44:21 | 118:10 127:2 129:12 |
| 70:9,10,11 | paying 72:12 | 59:10 60:21 | 72:25 77:3 | pled 98:13 |
| 73:19 75:17,19 | payment 26:8 27:10 37:6,11 | 61:15,16 64:7 | 80:25 81:10 | plenty 57:3 |
| 76:8 83:17 | 37:18,23 38:5,6 | 64:23 75:18,20 | 101:10 115:14 | point 6:10,14 7:2 7:3,3,4 9:13 |
| 103:17 106:8 | 38:7,12,23 | 94:21 98:17,23 | 137:8 | 18:8 24:16 |
| 106:17,20 | 40:10,11,17,17 | 99:1,3,20 | personal 26:16 26:22,24 44:14 | 29:25 36:23 |
| 117:13 121:2 | 45:7,25 46:3,6 | 100:16 101:1 | 48:20 49:10 | 37:12 39:4 |
| 122:2,24 | 46:7 48:25 49:1 | 103:23 107:6 | 76:1 98:10 | 45:15 53:3 |
| 123:15 126:20 | 49:2 51:10,14 | 107:20,23,25 | 131:18,19 | 56:16 57:1 |
| participated 30:12 121:19 | 51:16 56:22 | 108:6,10 | personally 25:13 25:17 64:19,20 | 60:10,16 61:17 |
| participating 61:25 62:3 | 57:7,11,14 58:7 | 110:19,23 | 64:22 108:21 | 63:2 73:19 |
| particle 63:15 | 58:18 59:1,2,3 | 111:5,13,21,25 | personnel-wise 107:7 | 79:21 80:3,4,5 |
| particular 20:22 28:13 29:18 | 59:15,24 60:3,6 | 114:8,13 124:9 | perspective 33:23 35:20 | 80:5,14 83:23 |
| 31:6 46:12 | 60:22,25 61:18 | 125:12,15,23 | pertain 72:22 | 89:10 97:9 |
| | 62:19 64:13,15 | 126:4,9,14 | pertained 105:8 | 101:12 109:6 |
| | | 130:4,6,23 | pertaining 93:20 97:10 | 128:18 129:2 |
| | | payroll 10:1 53:21 107:21 | pertains 79:22 | pointed 102:22 |
| | | pays 48:4 81:9 82:4,10,19 | | points 7:6 20:14 |
| | | PC 2:3 | | |
| | | PE 97:12 | | |
| | | penalty 135:23 | | |

David Klos - October 27, 2021

| | | | | |
|--|--|--|--|------------------------------|
| policy 33:20 35:2 35:6 | 84:2,9,17 | 128:19 | process 17:9 32:10 51:19 | 43:12 |
| portion 16:4 21:12 | prepared 26:7 53:18 54:9 | primary 9:15 109:5 | 66:17 83:24,25 | providing 12:24 |
| portions 20:8 | 64:20 66:14 | principal 37:5,9 37:13,16 38:9 | 109:8 121:3,4 | provision 114:19 |
| position 7:25 13:18 43:22 | 80:8 | 40:12 45:12 | 122:2 | 129:22,25 |
| 51:9 79:11,18 | preparing 18:9 19:20 129:8,10 | 46:9,16,24 47:2 | processing 10:1 | public 10:3 |
| 121:13,15 | prepay 46:15,19 46:24 47:24,25 | 47:22 48:16 | produced 1:18 83:14,16 117:6 | purport 28:8 |
| possibility 79:23 | 48:5,7 49:19 | 49:8,24 123:11 | production 117:14 | purpose 23:8,12 |
| possible 17:17 48:11 50:3 74:5 | 50:8 | 131:16 | professional 4:18 | 85:25 |
| 89:23,25 90:19 | prepaying 50:21 51:3 | print 117:8 | program 105:9 | purposes 30:21 |
| 91:17 95:1,8,9 | prepayment 37:19,23 38:1 | prior 14:22 19:18 24:19 27:9 | progression 5:24 | 31:21 32:22 |
| 95:10 | 38:11,13 46:13 | 31:19 40:10 | promissory 16:7 22:14 23:9 | 36:3 73:8 75:22 |
| possibly 41:6 | 63:23 64:12 | 53:18 56:17 | 24:21 25:2 | pursuant 12:22 |
| potential 53:19 92:12 97:17 | 113:5,12,18 | 57:5,12,17,21 | 27:13 33:17 | 13:14 74:15 |
| potentially 30:14 96:8,14,16 | 114:11 129:16 | 69:17 87:14,15 | 38:15 39:4 | 112:11 |
| power 89:9 90:21 90:23 | 129:18,23 | 88:15 92:4 | 46:12 50:19 | put 6:15 10:2 |
| practice 30:1,5 34:4,14 35:18 | 130:5 131:2,9 | 97:14 98:12 | 52:18 63:4 | 26:1 86:6 93:6 |
| 50:4 69:23 70:3 | 131:14 132:1 | 104:11 112:14 | 65:10 66:6,10 | |
| 73:6 78:7 79:4 | 133:12,20 | 112:15 113:5 | 66:13,20 67:12 | Q |
| 86:5 90:7 | 134:7,20,25 | 113:10,18 | 70:21 85:2 | qualification 64:4 |
| 109:11,12 | 135:5,7 | 122:22 123:23 | 97:11,16 | qualitative 16:1 |
| practices 70:11 | prepayments 27:2 38:10 | 126:7,12,18 | 122:19 130:3 | question 9:1 |
| pre 135:5 | 44:15,19,23 | 131:20 135:1 | 130:12,14 | 11:18,25 13:1 |
| precision 28:5 | 45:1,5 63:4,21 | priorities 89:11 | 131:18,19 | 14:13 16:8,22 |
| predicate 41:22 42:2 | 64:8 134:12 | privilege 132:6 133:2,4 | 133:12 | 16:25 17:2 |
| preference 73:7 73:11 90:7 | preposterous 89:15 | probably 4:24 6:12 8:9 9:7 | promoted 6:1 | 20:24 21:25 |
| prefix 135:5 | present 18:20,25 56:20 68:15 | 15:11,19 23:19 | proper 108:10 132:11 | 22:9,16 23:11 |
| premise 43:1,3 89:8 | 93:9 | 24:7 35:12 | protest 126:18 | 24:25 25:4,6,12 |
| prep 83:21 | presented 66:14 | 39:11 44:7 | provide 110:10 110:12 | 27:5 29:11 33:1 |
| prepaid 49:22 131:18,19 | president 43:10 43:11 121:17 | 73:24,24 83:9 | provided 13:2,3 13:13 20:15,15 | 33:25 34:15,22 |
| preparation 19:13 21:9 67:7 | pretty 11:15 60:24 | 98:7 105:3,13 | 21:6 40:12 | 35:14 36:5 |
| 67:8 84:19 | previously 53:6 125:3 | 108:7 114:19 | 76:13 80:6 | 37:21 38:18,21 |
| prepare 54:6 | pricing 10:16,16 | problem 57:2 | 102:5 107:2,24 | 39:1,8 40:4,15 |
| | primarily 6:7 26:22 88:5 | problems 29:21 | 109:25 110:4 | 40:19 42:2,25 |
| | | procedure 33:20 35:2,6 39:5 | 110:16 122:4 | 43:20 44:10,11 |
| | | proceedings 5:3 96:6 108:1 | 125:14 137:15 | 44:17,25 45:10 |
| | | proceeds 80:22 81:6 | provider 11:12 71:24 | 45:18 46:22 |
| | | | providers 10:16 | 47:3,9,16 48:9 |
| | | | | 48:23 49:16,18 |
| | | | | 49:25 50:2,14 |
| | | | | 51:6 52:22 |
| | | | | 53:23 54:8 55:4 |
| | | | | 55:13,20,22 |
| | | | | 57:9,20 60:13 |
| | | | | 61:2,4 63:6 |

David Klos - October 27, 2021

| | | | | |
|--|---|---|---|--|
| 64:1,10 65:20 66:1,8,16,21 67:16,24 69:21 71:4,13,21 76:19 77:7,16 77:21 78:5,9,24 79:6,20 81:3,12 81:24 82:7,14 83:15 87:4 88:19,24 89:6,8 90:15 91:4,10 93:14 94:9,12 94:13,14,21 95:6,7 96:5 97:24 99:5,24 100:1,20,21 101:4 102:1,16 103:16 104:19 104:22 108:3 119:3 125:20 125:20 128:14 130:8,9,17 131:4,7,12,22 132:4,5,11,14 132:24,24 133:6,14,17,23 134:9,13,16,18 134:20 135:3 questions 19:12 77:12 80:13 95:17 97:25 109:15 110:18 111:19 114:3 126:24 129:13 135:10,12 quick 48:12 quite 7:9 31:9 quote 115:22 | 96:3,7,18 raising 62:17 rate 84:15 86:2,6 ratify 28:6 ratio 104:2,10 rational 80:25 rationally 92:25 reached 104:11 read 20:8,10,20 20:25 21:11,11 44:22 46:25 48:24 118:6 127:8,14,21 128:6 130:1 131:14 132:23 reading 21:5 46:6 131:8 reads 46:23 real 107:13 realize 128:6 realized 127:21 really 6:12 9:16 10:15 16:8 54:4 73:9 78:12 83:13 95:9 101:11 105:4 107:5 108:19 109:2 128:19 129:6 realtime 85:14 reason 23:8 30:14 35:21 40:23,24 41:1 54:24 55:10 67:22,24 75:17 75:19 99:21 100:18,21 113:7,14 115:24 reasoning 105:2 reasons 23:20 74:1 88:4 recall 4:23 19:2 21:4,5 22:22 23:6 24:3 27:13 | 31:19 34:23 36:6 41:13 42:3 56:5,9,12,14 57:17,22 58:10 58:16,20 59:8 62:16 63:18 67:18 82:24 85:7 86:19 87:20 88:21 92:10 99:12 102:10 106:21 116:15 118:19 118:22 120:23 121:16 122:21 123:6,16 124:2 127:20 130:13 receipt 26:1 receive 74:18 received 99:19 100:15 103:19 106:19 receiving 22:24 33:3 recognize 27:23 104:7 recollection 5:25 8:3 28:20 29:17 40:7 50:18 51:18 52:15,17 55:7,8 68:17 75:21 76:6 78:16,17 88:3,4 91:24 94:5 95:13 101:24 105:7 115:4 123:21 125:6 126:2 record 4:5 16:14 25:9 64:6 68:3 105:24 106:2 117:12 recorded 37:13 37:14 38:7 recording 25:15 39:14 | records 110:24 111:4 recover 17:15 recoveries 17:10 recovers 16:6 reduced 137:10 reduction 38:8 45:12 refer 125:7 reference 52:18 referred 87:24 123:2 referring 87:17 98:22 reflected 37:14 44:13 120:8 reflects 103:21 refresh 54:13 regarding 16:7 18:24 100:16 127:5 regardless 16:16 16:20 60:17 72:24 regular 66:12 88:16 regularly 31:9 129:19,24 130:4,6 reimburse 70:24 reimbursed 81:15 reimbursement 53:21 72:23 reinstate 60:7 reinvestment 105:9 reiterate 17:13 REITs 10:3 reject 67:22,24 89:7 relate 19:22 related 70:20 74:11 81:1 92:18 96:3 | 97:16,16 99:20 100:16 102:20 103:7 137:20 relates 18:5 70:21 relating 19:23 relationship 53:15 133:21 relevant 5:5 relieve 45:14 111:6 114:11 129:18,23 130:3,5 relieved 112:15 relieves 131:2 reloaned 76:4 remainder 49:24 remember 5:16 7:5 12:1,18 13:9 14:24 15:10 18:6 22:22,24,25 32:5 34:11,16 34:18 38:20 39:24 42:8 50:25 51:24 52:1,10,13,23 53:13 56:8 57:5 57:16,24,25 58:3,19,22 59:25 60:8,20 62:20,22,25 63:1,23 67:4 69:13 71:14 74:5,6 78:17 83:22 84:20 85:4 86:15,17 87:11,23 88:2 92:10,11,12 93:2,17 94:5,18 94:19,22 97:18 97:19 98:19 101:15 105:4 108:5 109:7 110:21 113:13 |
| R | | | | |
| radar 93:6 radars 26:1 raise 24:5,7 119:3 raised 24:3 80:15 | | | | |

David Klos - October 27, 2021

| | | | | |
|---|--|--|--|---|
| 123:4,8 124:5 130:11 131:4,7 remembering 34:10 92:23 remind 99:6 rep 80:5 repaid 76:1 repay 89:3 repaying 93:25 repayment 76:7 repeat 22:10 27:6 100:3 rephrase 20:24 22:11 49:17 133:5 report 8:15 9:16 10:23 53:19 120:24 121:24 reported 1:23 reporter 117:8 135:13,16 137:1,3,15 represent 19:15 95:24 representation 19:17 represented 2:4 2:11,18 requested 137:13 137:14 reservation 91:25 respect 19:19 22:17 24:20 25:2,18 35:3 38:3 41:11 47:22 49:23 51:9 58:16 68:16 69:12 71:22,23 72:21 76:23 79:8 80:1 80:8 82:25 84:14,18 85:5 86:14 94:3,20 108:6 111:21 | 121:13 125:13 125:24 respectful 76:25 respond 25:7 60:15 response 128:16 responsibilities 7:15 8:7 9:22 108:16 responsibility 32:17,18 90:4,5 118:17 responsible 11:4 39:14 71:7 108:9,17,19 109:10,13,13 restate 61:10 resulted 71:25 retail 9:4 80:9 120:25 121:20 121:23 122:4 122:11 128:16 128:19 return 76:25 reverse 40:9 review 39:19 48:12 121:3 137:13 reviewed 84:10 ridiculousness 97:5 right 16:17,21 17:25 18:20 21:23 33:22 37:5 41:25 45:16 47:6 55:1 56:1 66:21 67:20 68:9 75:18 78:14 80:4 81:9 83:14 85:19 88:8,22 89:19 107:9 109:25 111:23 114:24 115:2 117:3,12 | 123:12 124:17 124:22,25 125:5 126:5 127:11,14,20 132:25 133:6 Rip 37:2 role 5:15 6:2,12 6:16,18,21 8:22 9:4,11 11:5 12:16 13:7,14 19:13 24:19 25:1,14,17,21 25:22,23 26:25 39:10 53:4,6 58:16 62:1 64:15,17 67:6 67:11 78:13 84:18,21 85:5,8 85:11 86:13,21 128:18 roll 23:15 rolled 125:3 rolling 88:15 rolls 39:18 64:18 roughly 6:9 round 39:20 81:18 RPR 1:23 Rukavina 2:5 3:3 3:6 4:4 9:10 11:21 12:3 13:5 14:16 17:23 18:4 20:19,23 20:25 21:6 22:3 22:11,19 23:17 25:8,16 27:7,17 27:18 29:16 33:5 34:6 35:1 35:24 36:11,21 38:2,20 39:2,20 40:9,18 41:19 41:22 43:4,23 44:20 45:6,14 45:23 47:3,10 47:17 48:13 | 49:9 50:1,5,17 51:8 53:11 54:3 54:11 55:6,16 55:24 56:14 57:12,21 60:19 61:5 63:10,14 64:14 65:23 66:4,11,19,25 67:1,18 68:4 70:1 71:10,18 72:6 76:24 77:8 78:1,9 79:2,9 80:18 81:8,21 82:2,8,17 83:16 83:19 86:1 87:8 88:21 89:17 91:1,7,13,20 92:7 94:3,11,14 94:17 95:7,14 110:18 111:9 111:20 112:3 112:10 113:19 116:20,25 117:7,11,15 119:9,16 120:4 120:9,15,21 125:16,19 126:25 127:2 128:22 130:11 130:19 131:8 131:17,24 132:6,9,13,17 132:20 133:1,4 133:8,18 134:1 134:14,24 135:8 rule 39:5 127:6 rush 135:19 S sane 80:25 satisfy 93:21 saw 128:16 saying 39:25 42:23 46:2,5 | 49:19 61:11 90:9 92:23 94:6 94:22 109:9 says 18:2 46:13 46:14 48:5,14 68:7 80:12 115:23 118:7 118:18 127:17 129:17 131:2 134:11 scenario 33:6 schedule 28:1 37:15,25 38:12 45:3,7 scheduled 27:9 38:5 40:10 56:22 57:7 129:19,24 130:4,6 schedules 64:21 80:10 111:3 school 4:15 5:7 Schroth 26:10,12 108:15,17 Science 4:16 scratch 27:7 screen 117:22 screwed 111:17 se 37:25 38:13 second 28:8 37:4 67:25 72:15 73:2 103:25 Section 46:13 130:22 131:8 131:14 securities 10:20 11:14 see 21:18 22:2 28:11,15,16 46:1,17,18 48:17,18 49:2 58:14 83:7,12 113:9 114:5 117:20,24 125:21 129:22 |
|---|--|--|--|---|

David Klos - October 27, 2021

| | | | | |
|--|--|--|---|--|
| 129:25 130:24 130:25 131:1 seeing 44:20 48:6 48:11 59:8 61:19 85:14 114:9 130:11 seen 50:17,22,23 83:9 114:18 126:18 Seery 15:8 18:13 19:8,9,11 20:3 53:15 56:15,19 57:13,15,18,23 60:5 96:25 97:3 97:21 98:2 129:9,11 Seery's 21:12,19 semiannual 14:22 send 42:23 68:7 sending 33:4,5,6 33:8 90:24 115:14 sends 80:2 senior 5:17 7:3 sense 50:4,5 73:20 104:4,5 108:20 113:22 113:25 134:22 135:4 sensitive 86:24 sent 36:16,18 54:15 59:17 69:4 76:5 83:1 83:2 115:1 sentence 46:14 48:13,21 50:8 50:16 sentences 127:25 separate 10:25 11:7 70:20 106:25 107:4 Separately 52:10 separating 79:23 Series 4:20 | service 11:12 71:24 services 10:17 12:23,24 13:3,4 13:13,15 41:3 43:12 53:20 71:11,15,17 107:2,15,15,24 108:8 109:22 109:24 110:4,7 110:10,12,16 set 115:14 118:7 settlement 9:6 seven 75:14 123:23 seven-figure 113:23 shape 6:16 shared 12:22 13:14 41:2 43:12 53:20 54:18 109:22 110:7 sheet 120:13,20 sheets 80:6,8 shocked 73:22 short 6:12 short-term 86:7 shorthand 1:24 137:2,7,25 shortly 116:11 show 28:8 117:5 showing 44:4 45:20 53:19 76:20 shows 45:25 side 85:11 96:15 sides 43:2 sign 85:1 signatures 22:24 86:18 signed 84:22 significance 128:11 significant 12:2 | 12:10 45:21 signing 86:14 signs 80:5 similar 8:7 13:4 13:16 74:9 82:24 107:12 107:19 single 23:15 29:21 32:17 34:12 36:8 62:14 123:22 sir 4:4 17:18 18:4 28:11,15 33:10 46:17 48:17 67:2,19 76:14 81:8 83:20 89:18 127:5 129:15,17 130:2 132:14 133:5,9 sister 97:9 sit 89:11 sitting 16:3,24 17:3,14 42:14 44:20 63:24 96:11 102:18 103:6 104:15 131:24 133:10 133:19 situation 31:22 69:23 93:1 situations 31:23 32:3 34:5 smart 17:18 50:7 SMU 4:15,17 solvency 87:6 solvent 87:2,5 somebody 35:19 somewhat 128:20 soon 118:10 132:21 sophisticated 44:21 sorry 9:20 22:19 24:22 41:21 | 45:24 47:20 55:21 57:19 58:25 63:16 76:16 78:14 88:22 99:8 108:11 129:14 129:20 sort 53:6 97:8 102:23 sought 87:25 sounds 50:10 80:21 81:19 82:17 source 64:6 speak 81:13 speaking 30:4 40:16 77:22 108:18 speaks 50:15 specific 8:6 14:4 28:20 31:22 34:11 38:3 42:15,18 50:25 51:1 52:23 58:4 68:17 91:24 95:13 103:14 112:23 123:17 129:25 specifically 4:23 15:10 34:24 39:10 42:8 51:24 52:13 56:7,12 62:13 67:20 69:14 71:14 74:6 81:13 83:11 86:4 87:11,24 92:13 93:8 94:22 98:21 112:20 115:10 118:16 specificity 34:24 36:7 42:11 53:13 82:16 96:14 102:24 | 105:14 specifics 14:24 93:18 specify 93:7 speculate 15:4 29:2 32:11 73:25 speculating 28:25 41:11 44:3 speculation 29:1 29:3,6 83:6 113:19 speed 106:24 spelled 37:24 split 108:16 spoke 18:10,19 101:6,9 spoken 18:13,15 spreadsheet 54:14 stake 18:1 stamp 117:17 standard 84:4,6 86:9,9 standpoint 92:18 135:6 STANG 2:10 start 27:7 47:17 95:19 111:17 started 5:7 10:5 101:17 108:23 starting 5:6 state 1:23 4:4,19 51:12 114:10 138:1 stated 137:9 statement 26:7 119:14 statements 36:17 116:14,18,24 119:8,19,22 120:1 STATES 1:1 step 32:9 68:25 |
|--|--|--|---|--|

David Klos - October 27, 2021

| | | | | |
|--|---|---|---|---|
| 134:5,5 Stinson 2:17 95:23 stood 87:11 Stoops 7:23 stop 21:10 65:9 94:15 100:13 street 1:25 2:4 10:17 82:3 strike 23:6 32:19 33:15 37:10 52:16 54:22 63:25 67:4 120:15 125:16 string 118:4 127:5 strong 73:11 92:17 structure 14:8 30:6 struggle 64:11 128:15 131:13 struggling 45:2 50:6,7 88:25 99:25 subject 108:10 Subscribed 135:24 subsequent 96:4 96:7,23 102:9 102:12 103:2 116:17 119:10 119:13 120:1,7 substance 19:1 98:6,9 substantially 16:2 substantive 97:1 sue 82:11 suggested 55:1 suggesting 62:22 128:9 Suite 2:4,17 138:2 sum 113:24 | summary 21:7 supervision 137:11 support 87:20 supporting 12:9 72:3 suppose 31:18 50:3 85:11 95:10 sure 5:7 6:2 19:4 20:1 26:6 27:21 31:23 37:22 44:7,8 47:19 49:18 51:13 55:21 58:8 61:11,25 64:3,3 65:11,14 66:19 74:24 85:12 95:12 97:24 99:10 100:22 103:6 106:15 125:9 127:4 128:25 129:1 135:15 surely 128:22 129:3 surprised 130:14 suspect 55:10 68:14 123:19 suspend 111:14 switch 65:8 sworn 1:19 4:2 137:4 <hr/> T <hr/> take 12:22 14:5 16:8 18:9 23:12 68:24 71:16 117:21 118:17 taken 1:20 87:14 137:7 takes 16:5 17:5,9 talk 12:14 18:12 21:21 54:3 98:15 122:14 | talked 19:15,24 69:13 94:4 103:3 talking 27:12 32:16,20 54:1 88:15 98:19 102:13 103:2 117:16 121:5 122:6 127:6 talks 129:16 130:22 tax 73:7 107:6,6 107:19 team 6:5,15 10:5 11:3 25:14,22 32:13,16,19 35:16 43:6,9 57:1 60:16 61:14 62:6,14 62:15 64:17 73:20 84:2 85:9 85:17 101:11 108:9 109:7 115:8,11,12,13 technical 78:6 technically 4:20 36:23 37:12 teeing 26:6 tell 7:11 14:18 24:22 28:4 34:2 34:7 36:25 44:2 52:7 53:11 55:17 56:3 58:23 59:5,14 69:16 71:16 83:17 93:4 103:6 105:13 106:10 112:13 112:25 113:2 115:20 116:2,6 116:22 119:12 120:6,18 122:9 126:7,12 137:4 telling 56:14 58:14 68:15 | tells 43:18 55:25 94:23 temporarily 76:12 tend 109:1 term 7:16 8:1 9:3 24:10 45:1 47:21 86:3 88:15 98:17 104:1,2,5,7,8 107:25 108:1 124:10,11,13 125:7,13,25 126:10,13 134:21,21 terminology 98:14 terms 6:19 9:23 10:11 18:13,15 19:23 22:20 26:6 35:16 43:14 61:4 92:11 93:4 107:14,19 testified 4:2 41:23 99:18 100:14 124:2 testify 16:15,19 testimony 35:24 62:9 79:12 98:16 100:22 100:23 137:9 Texas 1:2,23,25 4:19 81:22 82:1 82:9,16,21 135:25 138:1 thank 95:14 96:1 109:16,17 124:19 135:8 thanks 100:12 Thedford 23:2 thereto 137:21 thing 33:22 53:6 59:18 84:13 things 10:1 25:25 | 57:3 79:14 122:5 think 6:9 7:2 15:18 16:3 18:18 26:14 30:15 31:6,8,22 32:9 36:16,19 39:21 41:1,10 50:15 53:2 58:12,22 59:4 59:11 64:6 65:6 65:7,8 75:2,13 78:6 79:16 80:24 84:15 85:23 86:10,15 87:21 88:13 95:9 97:19 99:14 101:5,9 103:11 105:3 105:25 106:17 107:9,22 108:4 108:6 111:17 113:7,14,24 123:24 thinking 57:4 117:11 129:7 Third 2:10 73:6 third-party 10:16 11:12 thousand 92:6 threatened 5:2 three 5:9 6:12 97:12 102:11 124:10,11,13 124:24 125:2 throw 104:1 Thursday 19:14 Tim 106:17 time 4:24 5:15 6:21,23 7:9,11 7:12,15 8:10,14 8:24 10:2,4 12:6,10 16:14 24:6,8 25:1 28:21 29:25 |
|--|---|---|---|---|

David Klos - October 27, 2021

| | | | | |
|---|---|---|--|--|
| 36:23 37:12,18 39:11 41:4,12 42:5,12 43:22 43:22 44:19 47:13 49:4 52:14 53:2,8,14 53:15 54:21 56:16 59:23 60:2,10 62:5 63:2 65:12 66:11 74:10,20 79:4 80:15 83:23 84:12 86:23 89:10,16 92:10 93:5 95:12 101:13 108:24,25 109:6,16 111:12 112:14 113:17 116:2 122:18 123:18 129:2,7 134:12 135:1 137:8 timely 44:9 51:15 51:17 times 7:5 32:15 61:20 63:8 76:19 92:6 timing 15:24 title 5:15,16 6:22 7:1 10:9,11 12:16 13:7 26:14 titles 10:11 78:18 today 5:21 14:3 15:12 16:3,13 16:16,19,24 17:3,14 20:5 42:14 44:20 57:5 63:25 65:6 95:25 96:11 102:18 103:6 104:15 131:24 133:11,19 today's 47:6 | told 39:21 42:14 43:4 52:11,11 52:19 53:12 55:9 60:21 61:23 62:13,14 62:15 68:12 69:9 70:9 85:19 91:8 95:1 97:25 98:2 100:25 103:7 118:16 118:23 122:11 122:23 tomorrow 79:11 132:22 top 107:9 127:7 topic 96:2 98:3 topics 20:11 103:25 106:23 total 116:15 totaling 119:24 touched 98:16 track 111:2 129:1 tracker 118:10 tracking 39:15 transaction 34:13 70:21 76:9 115:21 116:7 118:24 transcript 135:14 135:17 137:13 transfer 29:9 30:2 31:8,20 32:8 34:19 36:1 40:22 41:16 69:2,10 76:15 77:4,18 85:16 90:12 91:22,23 92:9 93:3 115:8 transferred 30:20 75:24 77:10 78:18 79:13 transferring 34:8 35:11 39:22 42:4 75:9 | transfers 28:9,18 28:19,22 30:24 32:22 35:4,10 38:3 42:9 94:7 transitioned 109:1,6 transparent 115:17 Treasurer 121:11 treasury 9:6 107:6 treated 35:5 trigger 104:2,10 104:21 triggered 104:11 104:17 triggers 14:25 107:17 trouble 62:19 true 29:6 88:9 135:24 trust 15:16 17:10 17:15 18:6 trusts 26:16 65:23 108:21 truth 137:5,5,5 truthful 100:22 truthfully 16:16 16:19 try 62:23 106:24 trying 17:18 27:21 30:23 50:6 67:14 98:3 100:11 104:22 130:20 132:9 133:8 turn 114:15 123:25 turned 76:4 81:15 two 9:7 15:12 29:14 36:20 45:13 65:10 66:20 77:12 | 83:8 85:1 86:12 87:24 94:19 95:10 105:4,25 106:24 107:24 119:24 121:18 122:12 127:25 129:4 134:22 two-paragraph 84:12 TX 2:4,18 138:2 type 98:12 types 13:4 78:13 84:1 107:12,15 107:17 114:20 typewriting 137:10 typical 84:7 <hr/> U <hr/> Uh-huh 7:18 13:23 47:7 75:11 127:9 ultimate 16:12 17:8,10 ultimately 11:4 39:19 64:18 73:9 um 63:13 unable 89:3,14 undergrad 4:15 Undergraduate 4:14 understand 14:14 15:19 17:14 18:19 30:23 47:4 51:8 61:11 62:8 66:4 67:25 68:2 88:25 96:17 97:24 98:8 106:3 118:12 118:15 124:14 132:1 understanding 19:11 20:11,13 | 37:17 48:19 49:18 51:12,14 54:17,22,23 56:21 61:12,22 70:18 72:7,10 75:7 79:4 87:1 87:9 91:11 97:6 98:23 101:12 101:18,19 102:2 112:19 121:9 124:3,15 133:11,20,25 134:2,6 understood 52:2 63:12 95:4 102:25 unfair 34:17 unfamiliar 80:21 UNITED 1:1 unpaid 46:15,24 47:2,20 48:15 48:15 49:4 131:15,16 unscheduled 38:23 64:7,23 75:18,20 upcoming 25:25 updated 54:15 upfront 85:11 use 14:19 56:25 70:23 81:17 108:20 usually 31:15 33:16 utilized 71:17 <hr/> V <hr/> valid 39:3 valuation 5:17,19 5:24 6:2,15 9:14 10:7,9,14 10:15,24 11:3,7 11:12 71:11,15 71:17,25 72:1 72:13,14,21 |
|---|---|---|--|--|

David Klos - October 27, 2021

| | | | | |
|--|--|--|--|--|
| 107:6 valuations 11:4 value 11:14 71:16 valuing 10:19 variety 107:16 various 25:23 79:14 vary 17:12 verbatim 94:17 verbiage 132:25 verify 27:24 versus 87:12 videoconference 1:19 2:6,13,19 videotape 21:18 view 131:10 virtually 44:5 vis-a-vis 15:16 voluntary 37:24 vs 1:8 | Waterhouse 8:17 11:1 13:25 20:9 30:13,14,19 39:25 41:14 42:3,7 43:24 52:7,11,18,24 53:11 54:15,19 54:25 55:17,25 60:20 61:23 62:9 65:3 69:9 77:17 78:2,20 84:23 85:1,19 86:14 91:8 94:6 100:25 103:3 103:13 115:5 115:25 116:2 116:22 118:19 118:23 121:6 122:9 124:4,8 125:11,22 126:15 127:13 127:16 Waterhouse's 21:1,19 127:10 waters 43:14 way 6:16 20:12 22:22 31:15 34:3 35:17,22 48:24 54:1 63:8 69:6 72:15,17 76:10 82:19 87:18 92:1,1,1 92:2 93:24 94:6 95:3 97:5 102:23 114:10 121:5 137:19 ways 38:21 we'll 20:1 54:3 125:7 132:17 132:21 we're 12:8 27:12 32:15 43:11,12 64:1 65:8,9,10 65:12 79:22 80:4 117:17,18 | 121:5 122:6 we've 19:24 75:13 78:12 wearing 43:15 week 36:20 83:7 weekly 25:24 43:5,24 63:19 129:8,10 weeks 59:5 welcome 117:19 127:7 went 4:14 58:17 81:17 85:14 101:18 weren't 61:21 80:16 88:7 97:15 101:20 whatsoever 63:20 wherewithal 93:24 wind 16:5 17:5 winding 15:2,22 wire 59:17 61:19 118:7 withdrawn 91:19 110:11 111:15 113:1,7,8 124:10,12 within-entitled 137:6 witness 1:19 9:2 11:19 12:1 13:2 14:14 19:12 21:4 22:1,10,17 23:12 25:5,13 27:6 29:12 33:2 34:1,23 35:15 36:6 37:22 38:19 39:9 40:5 40:16 41:18,21 43:1,21 44:18 45:1,11,19 46:23 48:10,24 49:17 50:3,15 | 51:7 52:23 53:25 54:9 55:5 55:14,21 56:12 57:10 60:14 61:3 63:7 64:11 65:21 66:2,9,17 69:22 71:5,14 71:22 76:21 77:22 78:6,25 79:7,21 81:4,13 81:25 82:15 83:15 85:22 87:5 88:20 89:7 90:16 91:5,11 93:15 94:10 95:15 99:6,25 100:7,13,21 101:5 102:2,17 103:17 104:20 108:4 109:17 111:10 112:5 112:11 113:21 117:1 119:10 119:17 120:10 120:22 128:15 130:9,18 131:7 131:13,23 133:16,24 134:10,19 135:4,9 137:3 137:10 word 56:25 133:11,20 words 10:24 36:7 52:16,24 94:19 work 5:5 10:19 worked 5:8 11:22 62:4 working 5:7,11 12:5 world 108:23 116:3,7 118:22 119:2,12 120:6 120:18 worth 34:10 | worthiness 90:11 wouldn't 25:13 38:10 43:8 56:22,23 60:16 64:8,20 77:24 86:24 87:17 99:15 write 128:3,5 writes 127:13 writing 103:21 103:24 113:9 125:22 126:18 written 35:2,6 66:6 wrong 55:1 82:18 82:22 88:22 89:19 wrote 67:21 70:12 www.dickman... 138:4 |
| W | | | | X |
| want 16:24 44:10 54:4 63:8 90:6 95:18 96:19 98:15 100:10 101:14 104:1 117:9 134:19 135:13,16 wanted 24:17 34:3 96:2 wants 90:16,20 90:22 wasn't 23:24 24:1 31:20 37:18 38:5 50:4 51:11,15,16 53:4 57:1,3 59:20 60:15 62:6 70:17 72:19 73:3,3 75:2 101:11 103:17 108:12 129:10 | | | | Y |
| | | | | y'all 95:2 Yang 106:15 yeah 6:23 8:2 14:21 15:23 19:17 23:2 29:12,20 35:15 37:22 43:1 55:14 56:24 59:2 60:14 61:3 63:7,8,12,18 66:17 67:9 71:5 83:24 89:7 91:11 94:10 96:10 98:20 99:25 101:5 102:2 124:15 125:1 135:19 year 6:1 9:25 29:22 49:21 111:1,8,12,13 |

David Klos - October 27, 2021

| | | | | |
|---|---|---|--|--|
| 113:4 123:17 126:5,15,22 years 5:9 6:17 15:12 24:10,17 30:18 32:21 33:20 34:17 39:14 48:7 65:17 66:3 69:18 94:20 95:3,11 123:23 years' 34:10 yes-or-no 94:12 York 2:11 132:21 | 46:12 49:10 114:1 129:12 129:14 13-week 126:3 14 27:15,17,23 36:12 40:20 42:17 44:13,22 48:12 49:1 58:25 59:23 60:2,23 61:18 64:2,5 15 61:7 15(c) 80:9 121:4 127:6 128:17 16 8:9 31:18 127:2 17 8:10 18 8:10 19 8:24 45:24 49:2 1982 4:10 | 200 12:6 2009 5:12,15 6:3 6:3 29:24,25 122:17 2010 6:9 106:13 123:18 2011 6:10,21 106:13 123:18 2012 123:18 2017 6:22 22:13 23:7 24:8,18 88:22 105:12 124:25 2018 116:14 119:14 120:2 2019 8:11,14 9:10 9:13 10:6 11:10 11:16,21 27:14 28:9 29:8,17,21 29:25 31:18 35:8 36:15,22 40:21 41:1,13 42:8,16,16 44:13,13 45:23 45:24 65:13,15 66:11 75:14 78:20 80:6,19 87:2,9,13 88:9 88:14 89:2,17 91:21 92:8 93:2 93:11 105:13 110:20 111:6 111:12,21 112:2,6,8 114:23 115:9 121:7 2020 7:13,22 24:20,24 51:10 51:15,22 53:18 54:24 56:17,22 57:6,13,17,22 60:20 61:21 63:19 98:18,24 99:19 100:15 101:2 102:14 | 102:17,17 103:23 112:17 113:2,4,12 120:24 121:7 121:21 124:1,9 125:12,24 126:10 127:11 128:23 129:3 2021 1:15,21 13:24 58:25 59:23 60:2 61:8 87:16 88:1 112:22,25 113:3,10,16 126:8,13 128:2 129:4 136:1 137:22 21-03004-sgj 1:8 214 138:3 23-point 45:20 23.034- 45:21 24.7- 46:10 27 1:15,21 4:20 29 37:6 | 51:10,15 56:17 56:22 57:6,13 57:17,21 58:7,9 60:25 87:15 88:1 98:18,24 120:2 124:25 3102 2:17 312 138:1 338- 37:8 34th 2:11 3763 83:15 3800 2:4 38th 1:25 398,000 85:23 |
| Z zero 46:8 49:6 80:1 ZIEHL 2:10 | 2 2 66:24 67:2,7 73:25 76:3 80:4 85:23 87:9,13 92:8 114:23 115:9 2.03- 46:9 2.1 28:14 45:25 46:3 49:1,8 130:22 131:8 2.1- 46:5,7 2.4 68:7 69:2 70:7,19,23 72:7 73:18 75:22 76:3 77:10,18 78:9 85:18,20 91:22 92:8,15 115:8 116:3,23 2.4- 70:21 73:23 77:4 85:24 86:13 90:6 2:30 1:22 20 8:24 24:17 | 3 3 46:13 50:8 67:17 68:4 74:18,22 76:5 82:24 83:10,20 93:2,11 114:4,7 114:10,22 118:1,13 129:15 131:8 131:14 30 24:10,17 130:22 30-year 23:15 24:10 26:2 30(b)(6) 19:12,20 30.7 21:22 30.7- 27:12 300,000 28:14 31 22:13 23:7 24:18 45:21 | 4 4 3:3 45:23 91:21 4.4 118:9 4.4- 76:4 411,000 37:8 4228 138:2 445-9548 138:3 | 5 5 74:7,8,24 75:4 75:23 77:4,11 77:18 78:3 79:22 80:2 81:18 82:25 85:4 86:13 91:22 93:3 114:16 118:8 118:13,24 119:7,14 5- 76:5 90:1 5,019,000 75:3 5.2 80:19 5:00 95:19 5:14 1:22 135:21 500 1:24 2:3 500,000 123:9,12 |
| 0 0 36:8 69:4 08 4:24 09 4:24 | 1 1 8:11 24:20,23 66:24 67:2,7 80:3 113:10 126:8,12 137:22 1-31-23 138:4 1-4 27:17 1-6 127:3 1.3 28:13,14 1.4 58:25 10 19:6 32:21 33:20 34:10,17 69:18 95:3 123:19 100 15:25 10017-2024 2:11 101 138:2 109 3:5 11 123:19 127 3:6 13 23:8 27:9 | 6 6 4:10 127:11 128:22 129:3 6/30 122:2 | 6 6 4:10 127:11 128:22 129:3 6/30 122:2 | |

David Klos - October 27, 2021

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| In re | § | |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT, | § | Chapter 11 |
| L.P., | § | |
| | § | Case No. 19-34054-sgj11 |
| Debtor. | § | |
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| HIGHLAND CAPITAL MANAGEMENT, | § | |
| L.P., | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Adv. No. 21-03004 |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT | § | |
| FUND ADVISORS, L.P. | § | |
| | § | |
| Defendant. | § | |

DECLARATION OF DAVOR RUKAVINA

The undersigned, Davor Rukavina, hereby declares under penalty of perjury pursuant to the laws of the United States of America the following:

1. My name is Davor Rukavina. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration.

2. I am an attorney duly licensed to practice law in the State of Texas. I am lead counsel for Highland Capital Management Fund Advisors, L.P. (“HCMFA”), in the above styled and numbered Adversary Proceeding.

3. Attached hereto as Exhibit “A” is a true and correct copy of the *Defendant’s Second Set of Requests for Production to Plaintiff*, served by HCMFA on May 28, 2021.

4. Attached hereto as Exhibit “B” is a true and correct copy of the *Debtor’s Responses and Objections to Defendant’s Second Set of Requests for Production*, served by Highland Capital Management, L.P. (the “Plaintiff”), on June 28, 2021.

5. The first time that the Plaintiff produced the promissory notes the subject of this Adversary Proceeding, in their native Word format, was on October 26, 2021.

6. I caused two of my employees, Julian Vasek and An Nguyen, both associates at Munsch Hardt under my direct supervision, to review the Plaintiff’s production in this Adversary Proceeding for any e-mail from Mr. Frank Waterhouse to Ms. Kristin Hendrix authorizing her to affix his electronic signature to the promissory notes the subject of this Adversary Proceeding. After they originally found no such e-mail, I instructed them to search the production again just to be certain. Again, they reported to me that, after searching again, they found no such e-mail. I then personally reviewed all e-mails in said production from Mr. Waterhouse to anyone in April and May, 2019, and I found no such e-mail. Accordingly, I conclude that the Plaintiff’s production to HCMFA in this Adversary Proceeding does not contain any e-mail by which Mr. Waterhouse authorized Ms. Hendrix to affix his electronic signature to said notes.

7. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 53-449 is a true and correct copy of a deposition of Frank Waterhouse, without exhibits, taken in this Adversary Proceeding on October 19, 2021.

8. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 450-653 is a true and correct copy of a deposition of Kristin Hendrix, with exhibits, taken in this Adversary Proceeding on October 27, 2021.

9. Included in the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer* at HCMFA APP 654-813 is a true and correct copy of a deposition of David Klos, taken in this Adversary Proceeding on October 27, 2021.

10. I hereby swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed: November 30, 2021.

/s/ Davor Rukavian
DAVOR RUKAVINA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|------------------------------|---|-------------------------|
| In re | § | |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT, | § | Chapter 11 |
| L.P., | § | |
| | § | Case No. 19-34054-sgj11 |
| Debtor. | § | |
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| HIGHLAND CAPITAL MANAGEMENT, | § | |
| L.P., | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Adv. No. 21-03004 |
| | § | |
| HIGHLAND CAPITAL MANAGEMENT | § | |
| FUND ADVISORS, L.P. | § | |
| | § | |
| Defendant. | § | |

DEFENDANT’S SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF

To: Highland Capital Management, L.P., by and through its counsel of record, John Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067

Pursuant to Federal Rule of Civil Procedure 34, as made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7034, defendant Highland Capital Management Fund Advisors, L.P. hereby serves upon plaintiff Highland Capital Management, L.P. this its *Second Set of Requests for Production to Plaintiff* (the “Requests”). Responses to the Requests must be served on or before **June 28, 2021**, on the following:

Munsch Hardt Kopf & Harr, P.C.
Attn: Davor Rukavina
3800 Ross Tower
500 N. Akard St.
Dallas, Texas 75201

EXHIBIT "A"

Pursuant to Federal Rule of Civil Procedure 34(b)(1)(C), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7034, electronically stored information should be produced in native format.

I. DEFINITIONS

In responding to these Requests, you are instructed to use the following definitions:

“Communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including in person or by telephone, facsimile, telegraph, telex, electronic mail or other medium. The term also includes any Document transmitted or exchanged during such transmittal of information.

“Complaint” means the *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate*, filed by the Debtor in this Adversary Proceeding.

“Debtor” means Highland Capital Management, L.P. and includes all agents and representatives thereof.

“Document” means all handwritten, typed, or printed matter of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, agreements, correspondence, forecasts, memoranda, e-mails, notes, jottings, speeches, press releases, diaries, examinations, statistics, letters, telegrams, minutes, time records, payroll records, expense records, contracts, reports, studies, training manuals, canceled checks, statements, receipts, delivery tickets, returns, summaries, work orders, pamphlets, books, prospectuses, statement of operations, inter-office and intra-office communications, internal and external audit reports, internal and external accounting reports, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer print-outs, teletypes, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or aural records of representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures, and electronic, mechanical or electronic records or representations of any kind, including, without limitation, emails, tapes, cassettes, digital images, digital videos, videotapes, audiotapes, laser disks, disks (including CD-ROM disks), plans or other representations of anything concerning, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the discovery request at issue.

“HCMFA” means Highland Capital Management Fund Advisors, L.P. and includes all agents and representatives thereof.

“NAV Error” means the NAV error in the Highland Global Allocation Fund referred to in that certain April 7, 2019 memo from HCMFA to the Securities and Exchange Commission that was provided to John Morris by Davor Rukavina attached to an email dated May 24, 2021.

“Notes” means those certain alleged promissory notes attached as Exhibits 1 and 2 to the Complaint.

“Related” or “related to” means, without limitation, the following: effect, concern, refer to, reflect, evidence, display, contain, show, prove, encompass, support, demonstrate, involve, and/or include, in any way legally, logically, or factually connected to the matter referred to, or have a tendency to prove or disprove the matter referred to.

II. REQUESTS FOR PRODUCTION

REQUEST NO. 8

The Debtor’s compliance manual.

RESPONSE:

REQUEST NO. 9

All Microsoft Word copies of the Notes, including metadata.

RESPONSE:

REQUEST NO. 10

All email communications related to preparation of the Notes.

RESPONSE:

REQUEST NO. 11

All email communications with external auditors related to the Notes.

RESPONSE:

REQUEST NO. 12

All email communications related to the NAV Error.

RESPONSE:

REQUEST NO. 13

All email communications related to any insurance claim related to the NAV Error.

RESPONSE:

REQUEST NO. 14

All email communications related to the payment obligations of HCMFA to Highland Global Allocation Fund for the NAV Error.

RESPONSE:

Dated at Dallas, Texas this 28th day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
3800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
Email: drukavina@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 28th day of May, 2021, he caused a true and correct copy of this document to be served by e-mail on John Morris, Esq., counsel of record for the Debtor/Plaintiff.

/s/ Davor Rukavina

Davor Rukavina

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.,

Defendant.

§
§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§
§
§ Adv. Proc. No. 21-03004
§
§
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¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**DEBTOR'S RESPONSES AND OBJECTIONS TO DEFENDANT'S
SECOND SET OF REQUESTS FOR PRODUCTION**

Highland Capital Management, L.P., ("Plaintiff" or the "Debtor") hereby responds to *Defendant's Second Set of Requests for Production to Plaintiff* (the "Requests")² served by Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") in the above-captioned adversary proceeding (the "Adversary Proceeding"). The Debtor's responses and objections to the Requests (the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 34 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Debtor.
2. The Debtor objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. All references in these objections and responses to the Debtor's agreement to produce documents shall be construed to mean non-privileged documents.
3. The Debtor objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more

² Capitalized terms not defined herein shall have the meanings set forth in the Requests.

readily available to HCMFA from another source or for which the burden of obtaining such information is not substantially greater for HCMFA than it is for the Debtor.

4. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

5. The Debtor objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

6. The Debtor's agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within Plaintiff's possession, custody or control.

7. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 8:

The Debtor's compliance manual.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

The Debtor objects to Request for Production No. 8 on the grounds that it is vague, overly broad, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See Fed. R. Civ. P. 26(b)(1).*

REQUEST FOR PRODUCTION NO. 9:

All Microsoft Word copies of the Notes, including metadata.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

The Debtor objects to Request for Production No. 9 to the extent the term "metadata" is vague. Subject to the General Objections and this specific objection, the Debtor will conduct a reasonable search for, and produce, documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 10:

All email communications related to preparation of the Notes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 10, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 11:

All email communications with external auditors related to the Notes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 11, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 12:

All email communications related to the NAV Error.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 12, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 13:

All email communications related to any insurance claim related to the NAV Error.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

The Debtor objects to Request for Production No. 13 on the grounds that it is vague, overly broad, not proportional to the needs of the case, and not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 13 to the extent they are relevant to the NAV Error and the Notes, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 14:

All email communications related to the payment obligations of HCMFA to Highland Global Allocation Fund for the NAV Error.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Subject to the General Objections, the Debtor will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 14, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

Dated: June 28, 2021

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)

(admitted pro hac vice)

Ira D. Kharasch (CA Bar No. 109084)

(admitted pro hac vice)

John A. Morris (NY Bar No. 266326)

(admitted pro hac vice)

Gregory V. Demo (NY Bar No. 5371992)

(admitted pro hac vice)

Hayley R. Winograd (NY Bar No. 5612569)

(admitted pro hac vice)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

E-mail: jpomerantz@pszjlaw.com

ikharasch@pcszjlaw.com

jmorris@pszjlaw.com

gdemo@pszjlaw.com

hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward

Texas Bar No. 24044908

MHayward@HaywardFirm.com

Zachery Z. Annable

Texas Bar No. 24053075

ZAnnable@HaywardFirm.com

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.